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VOL. I

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 416

THE UNITED STATES OF AMERICA, PETITIONER

vs.

BERTELSEN & PETERSEN ENGINEERING COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 13, 1938
CERTIORARI GRANTED NOVEMBER 21, 1938

SUPREME COURT OF THE UNITED STATES

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1 [Caption omitted.]

In United States District Court, District of Massachusetts

No. 4146 Law Docket

BERTELSEN & PETERSEN ENGINEERING CO., PLAINTIFF
v.
UNITED STATES OF AMERICA, DEFENDANT

Petition

Filed September 19, 1929

To the HONORABLE JAMES M. MORTON, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS, RESPECTFULLY REPRESENTS THE BERTELSEN & PETERSEN ENGINEERING CO., WHO ALLEGES AND SAYS:

FIRST. The petitioner herein is a corporation organized under the laws of the Commonwealth of Massachusetts, having its prin-
2 cipal place of business in Boston, Massachusetts, and is a citizen and resident of that Commonwealth.

SECOND. At all the times hereinafter mentioned the United States of America was and still is a corporation sovereign and on information and belief, at all times hereinafter mentioned, John J. Mitchell and Malcolm E. Nichols were Collectors of Internal Revenue for the District of Massachusetts with offices in the City of Boston, Commonwealth of Massachusetts. Said John J. Mitchell has died and said Malcolm E. Nichols was not at the date of filing of this petition in office as Collector of Internal Revenue but has been succeeded in said office by Thomas W. White, who now holds the same.

THIRD. This action is brought against the United States of America in the United States District Court for the District of Massachusetts, said court having jurisdiction of the matters herein complained of by the petitioner.

FOURTH. The said action is one to recover back Federal war profits taxes, excess profits taxes and income taxes plus interest for the taxable periods ended December 31, 1917, or December 31, 1918, as the case may be, both years being sued jointly; which the taxpayer alleges were erroneously and illegally withheld from the said petitioner or erroneouly and illegally collected from the said petitioner and is an action arising out of the laws of the United States providing for internal revenue.

FIFTH. All returns, payments, claims for refund, and other action requisite to this suit have been duly made and filed in due season, and the claims for refund as to the matters herein complained of

have been denied or rejected by the Commissioner of Internal Revenue.

SIXTH. Petitioner duly filed with the Collector of Internal Revenue for the District of Massachusetts the income and profits tax returns for the calendar years 1917 and 1918 and the relevant dates of filing of all returns; the dates and amounts of all payments; the dates of the claims for refund; and the dates of the rejections or denials of the said claims for refund are herein detailed as follows:

3 The final 1917 return was filed on or before June 1, 1918. The final return was filed on or before June 15, 1919. There was paid on account of the 1917 original return—list page 1395—line 17—$277,586.23, and, in addition, August 1920, list page 31—line 1—$6,510.54—total $284,096.77. There was paid for 1918 list, per original return, account No. 403,152, including interest of $345.15, the sum of $242,384.72 and there was also paid August 1920 list, additional, page 32—line 2—$163.25, making a total of $242,547.97, from which when the interest for delay in filing and paying in 1919 was subtracted, there was left a tax paid of $242,202.82. Final communication was received January 23, 1926, showing overassessment for 1917 without interest of $91,570.34 and a further additional proposed assessment for 1918 of $34,555.68; to these two proposals the taxpayer entered no objection and in due course, subject to inability to pay on the part of the Treasury Department through lack of cash, the overassessment for 1917 less the additional tax for 1918 plus interest was received in the fall of 1927 undated by the collector, as per his overassessment certificate.

The taxpayer filed, and possesses acknowledged receipt of said action, refund claims for 1917 and 1918 in the amount of $34,555.68 with request for interest on November 28, 1927. These claims were rejected by letters received both in January and February 1928.

SEVENTH. The petitioner claims a refund in the sum of $34,555.68 and interest of at least 66 percent thereon in addition, based upon the following outline of events:

(a) That the Commissioner of Internal Revenue when preparing his refund or overassessment of $91,570.34 for 1917 credited same against the $34,555.68 for 1918 and returned to the taxpayer only the net difference plus interest, without ever having assessed the said additional tax for 1918.

(b) That when the taxpayer through its officer personally received the actual refund check for 1917, he immediately protested to the claims division of the Collector of Internal Revenue at Boston

4 that his corporation had not been assessed the additional tax for 1918 and that the representative of the claims division immediately acknowledged that his written records reflected that the additional tax for 1918 had never been assessed, but rather had been automatically and internally credited against the proposed overassessment or refund for 1917 in August 1926, through overassess-

ment list forwarded by the Commissioner of Internal Revenue duly executed in July 1926.

(c) That upon applying for an increase in 1917 overassessment to agree with the original amount of $91,570.34 the taxpayer was informed that waiver was filed which continued the years 1917 and 1918 open and assessable to December 31, 1925, and that further waiver was filed continuing the year 1918 open until December 31, 1926, and that the Commissioner prepared assessment list in July 1926, and hence the taxpayer was assessed legally within the statutory period.

EIGHTH. Wherefore the petitioner claims a refund of $34,555.68 for 1918, representing an amount within less than four years which has been taken out of the 1917 proposed refund and employed to pay the 1918 deficiency without having been assessed, hence claiming same as refund now for 1918 illegally paid, or requesting the said same amount for 1917 as never having been fully paid after allowance. The taxpayer claims further interest from June 1918, to date of allowance by this Honorable Court on the said $34,555.68, approximating $22,000.

Wherefore the petitioner prays judgment herewith for the said sum of $34,555.68 plus interest from June 1, 1918, together with reasonable costs of this suit.

BERTELSEN & PETERSEN ENGINEERING CO.,
By M. D. BERTELSEN, *Treasurer.*

JOSEPH WIGGIN,
LISPENARD B. PHISTER,
its Attorneys.

[*Duly sworn to by M. D. Bertelsen; jurat omitted in printing.*]

5 In United States District Court

Answer

Filed October 21, 1929

Comes now the respondent in the above-entitled action and for answer to the petition filed herein admits each and every allegation in paragraphs First to Eighth, inclusive, of the said petition, except any allegation or suggestion or implication in said paragraphs, or any of them, that the assessment of $34,555.68 for 1918 was not assessed or was assessed at any other time than in July, 1926.

And further answering the respondent avers that the petitioner's final return for 1918 was sworn to on June 16, 1919, and was filed subsequent to that date; that said additional assessment of $34,555.68 was assessed on the assessment list for July 1926, page 0, line 0 [printed page 34], a certified copy of which assessment list is hereto attached as Exhibit A and by reference made a part hereof.

Wherefore, the respondent prays that the petition may be dismissed and for its costs.

By its Attorney,

FREDERICK H. TAFT,
United States Attorney,
By J. DUKE SMITH,
Special Assistant to the United States Attorney.

[Memorandum. Exhibit A referred to in said answer as attached is here omitted, it being marked also "Petitioner's Exhibit 3," and will be found printed on page 33 of this record. James S. Allen, Clerk.]

6 In United States District Court

Motion to amend answer

Filed January 15, 1931

Now comes the respondent in the above-entitled action and moves to amend its answer filed herein by adding thereto the following:

And further answering the respondent says that on January 8, 1924, the petitioner filed a waiver extending the time for assessment and collection of taxes for the year 1918 for one year from the date of said waiver. A certified copy of said waiver is hereto attached, marked "Exhibit B" and by reference made a part hereof.

And further answering the respondent says that on February 23, 1924, the petitioner filed a waiver extending the time for assessment and collection of taxes for the year 1918 for one year after the statutory period of limitation or the statutory period of limitation as extended by any waivers already on file. A certified copy of said waiver is hereto attached, marked "Exhibit C" and by reference made a part hereof.

And further answering the respondent says that on February 27, 1924, the petitioner filed a waiver extending the statutory period for assessment and collection of taxes for the year 1918 for one year from the date of said waiver. A certified copy of said waiver is hereto attached, marked "Exhibit D" and by reference made a part hereof.

And further answering the respondent says that on October 30, 1924, the petitioner filed a waiver extending the statutory period for the assessment and collection of taxes for the year 1918 for one year after the expiration of the statutory period of limitation within which assessments of taxes may be made for the year 1918, or the statutory period of limitation as extended by Section 277 (b) of the Revenue Act of 1924, or by any waivers already on file with the Bureau. A certified copy of said waiver is hereto attached, marked "Exhibit E" and by reference made a part hereof.

7 And further answering the respondent says that all of said waivers were signed by the Commissioner of Internal Revenue.

And further answering the respondent denies each and every material allegation, item, count and particular in the petition contained, except as specifically admitted by the respondent.

By its Attorney,

FREDERICK H. TABB,
United States Attorney,
By J. DUKE SMITH,
Special Assistant to the United States Attorney.

Assented to.

JOHN W. LOWRENCE,
Attorney for the Petitioner.

BREWSTER, J. Motion allowed January 15, 1931.

Attest:

JOHN E. GILMAN, Jr., *Deputy Clerk.*

[Memorandum. Exhibit B, Exhibit C, Exhibit D, and Exhibit E, referred to in said motion to amend answer as attached, are here omitted, they being marked also "Petitioner's Exhibit 4," "Petitioner's Exhibit 5," "Petitioner's Exhibit 6," and "Petitioner's Exhibit 7," and will be found printed on pages 35 to 40 of this record. James S. Allen, Clerk.]

Recital as to hearing

On the same day said motion was allowed by the court and, issue having been joined, this cause was set down for hearing and fully heard by the court without a jury upon the issue, the Honorable Elisha H. Brewster, District Judge, sitting; on the same day the defendant filed a Motion for Judgment as follows:

In United States District Court

Motion for judgment

Filed January 15, 1931

Now comes the respondent in the above-entitled action and on the pleadings and the evidence in the above-entitled case moves
8 that judgment be entered for the respondent and against the petitioner with costs.

By its Attorney,

FREDERICK H. TABB,
United States Attorney,
By J. DUKE SMITH,
Special Assistant to the United States Attorney.

Recital as to hearing

On the same day the said motion for judgment was heard by the court and the cause and the motion for judgment were taken under advisement.

In United States District Court

Motion for rehearing

Filed January 16, 1931

Now comes the petitioner in the above-entitled cause and moves that a rehearing be granted and assigns as grounds for said rehearing the following:

That late in the afternoon of the day of the hearing of this cause, James V. Giblin, Esq., the tax accountant for some years in charge of the petitioner's tax affairs, in going over his files discovered in the tax file for 1919 a duplicate original of a letter of the Treasury Department adressed to the petitioner under date of October 25, 1924, a copy whereof is hereunto attached the existence of said letter being unknown to petitioner and its counsel in the preparation and in the trial heretofore of said cause; and the petitioner calls attention to the third paragraph of said letter.

By its Attorney,

JOHN W. LOWRANCE.

IT:CA:2113-4.

OCTOBER 25, 1924.

BERTELSEN & PETERSEN ENGINEERING CO.,
256 Border Street., East Boston, Mass.

SIRS: Receipt is acknowledged of letter dated October 16, 1924, of J. A. Vanden Heuvel and Company, Washington, D. C.,
9 enclosing brief covering 1918 to 1920, prepared on behalf of your corporation.

You are advised that a conference has been arranged for 1.45 o'clock, November 21, 1924, Room 114, Treasury Annex No. 2, Fifteenth Street and Ohio Avenue, Northwest, Washington, D. C.

In view of the early expiration of the waivers at present on file from your corporation for the years 1917 and 1918, and in view of the fact that the statutory period within which the Commissioner may assess additional taxes for the year 1919, will expire presently, it is requested that renewal waivers for the years 1917 and 1918, and waiver for 1919, be executed by your corporation and forwarded to this office.

Blank forms of waivers are enclosed.

Respectfully.

J. G. BRIGHT, *Deputy Commissioner.*
By ——— ——— *Chief of Section.*

Enclosures: 3 Waiver forms.

Thereafter at the same term, on January 26, 1931, the said motion for rehearing was heard by the court and was allowed.

In United States District Court

Motion to amend petition

Filed February 11, 1931

Now comes the petitioner and moves that it be allowed to amend its petition by inserting at the end of paragraph Eighth thereof and additional paragraph, "Ninth," with two exhibits, A and B, attached thereunto respectively, as follows:

NINTH. The petitioner further says that on or about the eleventh day of October, 1927, it was paid, and received under protest, the sum of $52,304.02, and was at the time of said payment, received under protest, handed by the Collector of Internal Revenue at Boston a certificate of overassessment, photostatic copy of which is attached hereunto, by reference made a part of this petition and marked "Exhibit A"; that the petitioner was at the same time paid the
10 sum of $23,115.75, as appears in said copy of said certificate of overassessment hereunto annexed marked "A"; that if the petitioner is in error in respect of its claim that the alleged additional assessment for the year 1918 in the amount of $34,555.68 was erroneous, then there was at such time, and had been from the twenty-seventh day of July 1926, due to it interest additional to the said sum of $23,115.75, as appears in said interest item in said certificate of overassessment hereunto annexed marked "Exhibit A"; that the petitioner seeks an accounting in respect of said interest, and for the assistance of the court in computing the said interest as same should be accounted for by the respondent to the petitioner, the petitioner submits herewith a computation which is hereunto annexed by reference, made a part of this petition and marked "Exhibit B"; that the petitioner says that there will be found upon accounting that there is due to it, on the basis of the accounting sought, the sum of $19,417.61, together with interest thereon from October 10, 1927, to the date of the bringing of this suit at the rate of six percent per annum.

And the petitioner moves further to amend its petition by striking out the prayer thereof and by inserting in the stead thereof the following prayer:

Wherefore, the petitioner prays that judgment be entered in its favor for the sum of $34,555.68, together with interest thereon due the petitioner in accordance with law.

And the petitioner further prays that it may have an accounting of interest due it in the premises of its transactions with the respondent as to the assessment and payment of taxes, the assessment and payment of overassessments, credits for overassessments and over-payments and/or the payment to it of interest thereon, and/or the failure and refusal of the respondent to pay interest due in the premises;

and that this court may otherwise right and justice do in the premises, and that it may have its costs.

By its Attorneys.

JOSEPH WIGGIN,
JOHN W. LOWRANCE.

11 [Memorandum. Exhibit A, referred to in said motion to amend petition as attached, is here omitted is being marked also "Petitioner's Exhibit 3" and will be found printed on page 33 of this record. James S. Allen, Clerk.]

Exhibit B to motion

If assessment of $24,555.68 is invalid, interest should be computed as follows:

Int. on $6,510.54	10/14/20–7/27/26	5 yrs. 286 days		$2,250.25
" " 28,045.14	8/8/19–7/27/26	6 " 354 "		11,728.25
" " 4,710.64	8/8/19–7/27/26	" " " "		1,969.95
" " 22,013.06	8/8/19–7/27/26	" " " "		9,205.68
" " 10,000.00	2/28/19–7/27/26	7 " 149 "		4,444.93
" " 20,290.96	6/17/18–7/27/26	8 " 40 "		9,873.08
				$39,481.14
Less interest allowed				23,115.75
Interest due to 7/27/26				$16,365.39
Int. on $91,570.34	7/27/26–10/10/27	1 yr. 75 days		6,623.17
Interest due to 10/10/27				$22,988.56
The judgment should, therefore, be for the above, plus				34,555.68
Total of judgment				$57,544.24

Judgment should carry interest from 10/10/27 to date.

If assessment of $34,555.68 is valid, interest calculation should be as follows:

After the deduction of $34,555.68 on 7/27/26, balance refundable was $52,304.02.

Int. on $52,304.02	7/27/26–10/10/27	1 yr. 75 days		$3,783.09
Interest due to 7/27/26				16,365.39
Total interest due to 10/10/27				$20,148.48

From this should be deducted interest admittedly assessed correctly of $730.87, leaving a balance due of interest of $19,417.61

12 To this amount interest should be added to the date of judgment from 10/10/27.

In United States District Court

Answer to amended petition

Filed February 16, 1931

Now comes the respondent in the above-entitled action and for its answer to the amended petition on file herein denies each and every material allegation, item, count and particular in said amended petition contained.

And further answering the respondent says that interest on the overassessment was allowed in full to the petitioner in accordance with the provisions of Section 1116 of the Revenue Act of 1926.

By its Attorney,

FREDERICK H. TABER,
United States Attorney,
By J. DUKE SMITH,
Special Assistant to the United States Attorney.

Recital as to hearing

Thereupon on the same day, February 16, 1931, the cause was again set down for hearing and fully reheard by the court, the Honorable Elisha H. Brewster, District Judge, sitting, as aforesaid, and the following Requests for Rulings was filed by the petitioner:

In United States District Court

Requests for rulings

Filed February 16, 1931

The petitioner requests that this Honorable Court rule as follows:

1. That the waiver of February 23, 1924 (Petitioner's Exhibit 5), upon its signature and acceptance by D. H. Blair, Commissioner, supplanted and rendered null and void the waiver of January 8, 1924 (Petitioner's Exhibit 4).

2. That the waiver of February 27, 1924 (Petitioner's Exhibit 6), upon its signature and acceptance by D. H. Blair, Commissioner, supplanted and rendered null and void the waiver of February 23, 1924 (Petitioner's Exhibit 5).

13 3. That the close proximity of the dates January 8, 1924, February 23, 1924 and February 27, 1924, upon which the three waivers (Petitioner's Exhibits 4, 5 and 6, respectively) were executed, in and of itself, taken in conjunction with the subject-matter thereof, negatives the claim of the respondent that the waivers are to be tacked on to each other, as is contended by the respondent.

4. That the close proximity of the dates January 8, 1924, February 23, 1924 and February 27, 1924, upon which the three waivers (Petitioner's Exhibits 4, 5 and 6, respectively) were executed, in and of itself affirmatively shows that the petitioner intended that the waiver of February 23, 1924 (Petitioner's Exhibit 5) should supplant the waiver of January 8, 1924 (Petitioner's Exhibit 4), and that the waiver of February 27, 1924 (Petitioner's Exhibit 6) should supplant the waiver of February 23, 1924 (Petitioner's Exhibit 5).

5. That in signing and accepting the waiver of February 23, 1924 (Petitioner's Exhibit 5) and the waiver of February 27, 1924 (Petitioner's Exhibit 6), the Commissioner, D. H. Blair, acceded to and acquiesced in the acts of the petitioner in supplanting the waiver of January 8, 1924 with the waiver of February 23, 1924,

and in supplanting the waiver of February 23, 1924 with the waiver of February 27, 1924, and the act and intention of the petitioner in respect of said transactions were manifestly known to the Commissioner.

6. That in attempting to assess the deficiency assessment of $34,555.68 the respondent purported to act under the Internal Revenue Act of 1926.

7. That the deficiency assessment of $34,555.68, if lawfully made, was made under the Internal Revenue Act of 1926.

8. That the statutory period of assessment, as extended by waiver and/or by statute, had expired prior to the alleged date of the deficiency assessment of $34,555.68 for the year 1918.

9. That the statutory period for deficiency assessment having expired, the respondent is forced in its justification of the deficiency assessment of $34,555.68 to depend upon extension thereof by waiver, and it is necessary for the respondent to elect as to whether it
14 shall stand upon the waiver of January 8, 1924 (Petitioner's Exhibit 4), the waiver of February 23, 1924 (Petitioner's Exhibit 5), or the waiver of February 27, 1924 (Petitioner's Exhibit 6), as the waiver so chosen by election may be extended by the waiver of October 30, 1924 (Petitioner's Exhibit 7).

10. That the writing by the respondent in longhand of the figures and word "1918 Expires 6/15/26" appearing on Petitioner's Exhibit 8, which bears date September 16, 1925, constitutes an admission by the respondent that it had accepted the waiver of February 23, 1924 (Petitioner's Exhibit 5) as displacing and rendering null and void the waiver of January 8, 1924 (Petitioner's Exhibit 4).

11. That the respondent's letter to the petitioner dated October 25, 1924 (Petitioner's Exhibit 13) in and of itself shows that the respondent had, on or before the date of said letter, elected to stand upon the waiver of February 23, 1924 (Petitioner's Exhibit 5) and had treated as null and void the waiver of January 8, 1924 (Petitioner's Exhibit 4), and had, for its own purposes, disregarded, as expiring aforetime, the waiver of February 27, 1924 (Petitioner's Exhibit 6).

12. That the respondent's letter to the petitioner dated October 25, 1924 (Petitioner's Exhibit 13) within itself constitutes an admission that the respondent had, on or before the date of said letter, elected to stand upon the waiver of February 23, 1924 (Petitioner's Exhibit 5) and had treated as null and void the waiver of January 8, 1924 (Petitioner's Exhibit 4), and had, for its own purposes, disregarded, as expiring aforetime, the waiver of February 27, 1924 (Petitioner's Exhibit 6).

13. That the words "any waivers already on file with the Bureau", as they occur in the waiver of February 23, 1924 (Petitioner's Exhibit 5), and the waiver of October 30, 1924 (Petitioner's Exhibit 7) can only refer to waivers on file which were in force and effect at the time of filing of said waivers of February 23, 1924 and October 30, 1924, the mere physical presence of the antecedent waivers in the files of the respondent being as a matter of law insufficient.

14. That the time for the lawful making of the deficiency
15 assessment for the year 1918 cannot, by any interpretation of the law and the facts, be extended beyond June 27, 1926.

15. That if the respondent, relying on the provisions of the Act of 1926, seeks to obtain, by reason of the suspension of the operation of waivers then in force, time additional unto said waivers and this court sustains said contention of the respondent, then the period thereby gained will expire June 27, 1926.

16. That judgment should be entered in favor of the petitioner in the sum of $57,544.24, together with interest thereon from October 11, 1927 to the date of the bringing of this suit, together with interest on said sums from the date of the bringing of this suit to the date of judgment.

17. That even though this court should rule that the deficiency assessment of $34,555.68 for the year 1918 was lawful, still there is due to the petitioner, on account of interest from it unlawfully withheld, the sum of $19,417.61, together with interest thereon from October 11, 1927 to the date of the bringing of this suit, together with interest on said sums from said date of bringing of this suit to the date of judgment.

18. That even though this court should rule that the deficiency assessment of $34,555.68 for the year 1918 was lawful, still there is due to the petitioner, on account of interest from it unlawfully withheld, the sum of $15,634.52, together with interest thereon from July 27, 1926 to the date of the bringing of this suit, together with interest on said sums from said date of bringing of this suit to the date of judgment.

19. That no notice was given to the petitioner of the deficiency assessment of $34,555.68 within a reasonable time, and said deficiency assessment is by reason of the respondent's failure to give notice within a reasonable time void.

By its Attorneys,

JOSEPH WIGGIN,
JOHN W. LOWRANCE.

April 6, 1931. E. H. B.

BREWSTER, J. All of the above requests for rulings are denied.

16 This cause was thence continued under advisement to the March Term, 1931, when, to wit, April 6, 1931, all of the requests of the petitioner were denied and an opinion was announced by the court for the recovery by the petitioner from the defendant of two amounts aggregating $44.07.

Said cause was thence continued to the June Term, A. D. 1931, when, to wit, August 27, 1931, a bill of exceptions was filed by the petitioner within the extended time.

This cause was thence continued from term to term to the present December Term, 1931, when, to wit, December 2, 1931, a substitute bill of exceptions assented to is filed by the petitioner and allowed by the court.

In United States District Court

Agreement for entry of judgment

Filed December 4, 1931

Now come the parties in the above-entitled action and by their attorneys agree that judgment may be entered forthwith for the petitioner in the amount of forty-four and 07/100 dollars ($44.07), without costs.

By their Attorneys,

JOSEPH WIGGIN,
LISPENARD B. PHISTER,
JOHN W. LOWRANCE,
Attorneys for Petitioner.
FREDERICK H. TABR,
United States Attorney,
by J. DUKE SMITH,
Special Assistant to the United States Attorney,
Attorney for the Respondent.

In United States District Court

Judgment

Thereupon, to wit, December 4, 1931, it is considered by the court, the Honorable Elisha H. Brewster, District Judge, sitting, that the said Bertelsen & Petersen Engineering Co., petitioner, recover from the United States of America, defendant, the sum of forty-four and $\frac{07}{100}$ dollars ($44.07), without costs.

17 In United States District Court

Petitioner's substitute bill of exceptions

Filed and Allowed December 2, 1931

Statement of facts

This is a petition by Bertelsen & Petersen Engineering Co. filed on September 19, 1929, seeking to recover the amount of a deficiency assessment of income and excess profit taxes for the calendar year 1918, in the amount of $34,555.68, which amount the petitioner alleges the Government had unlawfully assessed in July of 1926, and had collected by withholding said sum from the petitioner in repaying to it an overassessment for the year 1917, in the sum of $91,570.34.

By motion to amend its petition filed and allowed February 11, 1931, the petitioner also seeks an accounting of interest due it in

the premises of its transactions with the respondent as to the assessment and payment of taxes, etc. for the calendar years 1917 and 1918.

All requisite conditions precedent to the bringing of its petition were complied with by the petitioner.

The pleadings are a part of this record and may be referred to as a part of this bill of exceptions.

The case came on for trial before Brewster, J., on January 15, 1931 and was taken under advisement. On January 16, 1931, the petitioner filed a motion to re-open the case. Hearing was had upon plaintiff's motion to re-open the case on January 26, 1931, before Brewster, J., and the motion was allowed. On February 11, 1931, the petitioner's motion to amend its petition was filed and allowed. On February 16, 1931, the case as re-opened was heard by Brewster, J.

Both at the original hearing and at the rehearing, the case was tried solely upon the pleadings, certain documentary evidence and upon facts agreed to in open court, as hereinafter set forth, saving only that counsel for the petitioner, at the original hearing, after the introduction in evidence of the four waivers, Exhibits 4 to 7 inclusive, produced as witnesses Paul J. Bertelsen, at all times mentioned in the petition vice-president of the petitioner, and
18 James V. Giblin, Esq., at all times mentioned tax consultant to the petitioner, and, the admissibility of their testimony being challenged, made the following formal offer of proof:

That waiver No. 2 was sent in order that the year 1917 might be included, waiver No. 1 having been confined solely to taxes for the year 1918; that waiver No. 2 was not in the usual form and that waiver No. 3 was sent to correct the use of the informal waiver No. 2 and specifically embraced the two years 1917 and 1918; that the sole intent on the part of the petitioner in sending waiver No. 3 was to displace waiver No. 2 and that waiver No. 4 was given on the assumption of the petitioner that waiver No. 2 had been displaced.

This evidence was excluded and the petitioner's exception saved.

At the trial it was agreed by counsel that the taxes which the petitioner paid for the year 1917 were paid on the dates and in the amounts as follows:

$112,817.39 was paid in April 1, 1918.
$100,000.00 was paid on June 17, 1918.
$10,000.00 was paid on February 28, 1919.
$54,768.84 was paid on August 8, 1919.
$6,510.54 was paid on October 14, 1920.

There was another item paid which has been refunded and has no bearing on the issue in this case.

At the rehearing, a letter dated October 25, 1924, from the Deputy Commissioner of Internal Revenue to the plaintiff was, subject to objection and exception saved by the respondent, offered by the petitioner and was marked "Exhibit 13."

At the rehearing the respondent produced a computation of the interest previously paid to the taxpayer as follows:

STATEMENT OF INTEREST

Overassessment for 1917		$91,570.34
Additional tax for 1918	$34,555.68	
Additional tax for 1919	4,710.64	
Total against which 1917 overassessment applied as credit		39,266.32
Net amount refundable		52,304.02
19 1917 tax paid 10/14/20 credited against 1918 taxes		6,510.54
1917 tax paid 8/18/19, $54,768.84, amount credited against 1918 taxes		28,045.14
Total		34,555.68

The due date of the 1918 taxes being March 15, 1919, and the date of payment of this amount of 1917 tax being subsequent thereto, no interest is payable.

1917 tax paid 8/18/19—$54,768.84, amount credited against 1919 taxes. $4,710.64

CALCULATION OF INTEREST

Amount of tax				$4,710.64
	Mo.	Day	Year	
Due date of 1919 taxes	3	15	20	
Payment date of 1917 taxes	8	18	19	
Interest period	6 months—28 days			
Rate	3.4273 percent			
Interest paid				$161.45
Balance of 1917 taxes paid 8/18/19				$22,013.06
Date of allowance	July 27, 1926			
Date of payment	Aug. 8, 1919			
Interest period	6 yrs., 11 months, 9 days			
Rate	41.64794 percent			
Interest paid				$9,167.99
Amount of 1917 taxes and interest paid 8/8/19				$7,819.95
Date of allowance	July 27, 1926			
Date of payment	Aug. 8, 1919			
Interest period	6 yrs., 11 months, 19 days			
Rate	41.8123 percent			
Interest paid				$3,269.70
Amount of 1917 taxes paid 2/28/19				$10,000.00
20 Date of allowance	July 27, 1926			
Date of payment	Feb. 28, 1919			
Interest period	7 yrs., 4 months, 29 days			
Rate	44.47671 percent			
Interest paid				$4,447.67
Amount of 1917 taxes paid 6/17/18				$12,471.01
Date of allowance	July 27, 1926			
Date of payment	June 17, 1918			
Interest period	8 yrs., 1 month, 10 days			
Rate	48.66438 percent			
Interest paid				$6,068.94

TOTALS

	Amounts refunded	Interest
	$22,013.06	$9,167.99
	7,819.95	3,269.70
	10,000.00	4,447.67
	12,471.01	6,068.94
Total	$52,304.02	$22,954.30
Interest on $4,710.64 principal of which was credited against 1919 tax		161.45
Total interest paid		$23,115.75

Above computation of interest is in accordance with the provisions of Section 1116 of the Revenue Act of 1926.

Mr. Clark offered the following explanation of how the Government arrived at the computation of interest:

From the amount of overassessment for 1917, $91,570.34, we deduct amounts credited to additional taxes for 1918 and 1919 in the amounts of $34,555.68 and $4,710.64, respectively, or a total of $39,266.32, leaving $52,304.02, which was refunded in cash.

The last payment of the 1917 tax was $6,510.54, made October 14, 1920. The second last payment of the 1917 tax was $54,768.84, made August 18, 1919. We credit the last payment of $6,510.54 against
1918 taxes (the oldest taxes) and the second payment to
21 the extent of $28,045.14, or a total of $34,555.68 credited to 1918 taxes. No interest on the $34,555.68 was allowed.

The second oldest tax was for 1919 in the amount of $4,710.64 and this was also credited out of the second last payment of 1917 taxes of $54,768.84. The Government had the benefit of that amount from August 18, 1919, to March 15, 1920, and interest was allowed between those dates in the amount of $161.45.

The balance of $54,768.84 paid in August 1919, not used as credits, was a part of the refund of $52,304.02, and the Government had the benefit of this difference amounting to $22,013.06 until July 27, 1926, and it allowed interest in the amount of $9,167.99.

$7,819.95 was paid on account of the 1917 taxes on August 8, 1919, of which the Government had the benefit until July 27, 1926, and on which interest has been allowed in the amount of $2,369.70.

$10,000 was paid on account of 1917 taxes on February 28, 1919, of which the Government had the benefit until July 27, 1926, and on which interest has been allowed in the amount of $4,447.67.

$12,471.01 was paid on account of 1917 taxes on July 17, 1918, of which the Government had the benefit until July 27, 1926, and on which interest has been allowed in the amount of $6,068.94.

The total of these interest payments made to the plaintiff is $23,115.75.

This computation of the Government, together with Petitioner's Exhibit B attached to its amended petition, was considered by the court. Exhibit B is as follows:

Exhibit B

If assessment of $34,555.68 is invalid, interest should be computed as follows:

Int. on	$6,510.54	10/14/20–7/27/26	5	yrs.	286	days		$2,259.25
" "	28,045.14	8/8/19–7/27/26	6	"	354	"		11,728.25
" "	4,710.64	8/8/19–7/27/26	"	"	"	"		1,969.95
" "	22,013.06	8/8/19–7/27/26	"	"	"	"		9,205.68
" "	10,000.00	2/28/19–7/27/26	7	"	149	"		4,444.93
" "	20,290.96	6/17/18–7/27/26	8	"	40	"		9,873.08
								$39,481.14
22	Less interest allowed							23,115.75
	Interest due to 7/27/26							$16,365.39
Int. on $91,570.34	7/27/26–10/10/27–1 yr. 75 dys							6,623.17
	Interest due to 10/10/27							$22,988.56
The judgment should, therefore, be for the above, plus								34,555.68
	Total of judgment							$57,544.24

Judgment should carry interest from 10/10/27 to date.

If assessment of $34,555.68 is valid, interest calculation should be as follows:

After the deduction of $34,555.68 on 7/27/26, balance refundable was $52,304.02.

Int. on $52,304.02 7/27/26–10/10/27–1 yr. 75 dys		$3,783.69
Interest due to 7/27/26		16,365.39
Total interest due to 10/10/27		$20,149.48

From this should be deducted interest admittedly assessed correctly of $730.87, leaving a balance due of interest of $19,417.61.

To this amount interest should be added to the date of judgment from 10/10/27.

All exhibits, with the exception of Exhibit 13, were admitted without objection and/or by agreement.

All exhibits are by reference made a part of this bill of exceptions and may be referred to.

The foregoing constitute all the facts material to the issues raised by this record.

Petitioner's requests for rulings

In the course of the trial of the case and before arguments, the petitioner requested the court to make certain rulings of law, of which the following were denied:

1. That the waiver of February 23, 1924 (Petitioner's Exhibit 5), upon its signature and acceptance by D. M. Blair, Commissioner, supplanted and rendered null and void the waiver of January 8, 1924 (Petitioner's Exhibit 4).

2. That the waiver of February 27, 1924 (Petitioner's Ex-
23 hibit 6), upon its signature and acceptance by D. H. Blair, Commissioner, supplanted and rendered null and void the waiver of February 23, 1924 (Petitioner's Exhibit 5).

3. That the close proximity of the dates January 8, 1924, February 23, 1924, and February 27, 1924, upon which the three waivers (Petitioner's Exhibits 4, 5, and 6, respectively) were executed, in and of itself, taken in conjunction with the subject matter thereof, negatives the claim of the respondent that the waivers are to be tacked on to each other, as is contended by the respondent.

4. That the close proximiity of the dates January 8, 1924, February 23, 1924, and February 27, 1924, upon which the three waivers (Petitioner's Exhibits 4, 5, and 6, respectively) were executed, in and of itself affirmatively shows that the petitioner intended that the waiver of February 23, 1924 (Petitioner's Exhibit 5) should support the waiver of January 8, 1924 (Petitioner's Exhibit 4), and that the waiver of February 27, 1924 (Petitioner's Exhibit 6) should supplant the waiver of February 23, 1924 (Petitioner's Exhibit 5).

5. That in signing and accepting the waiver of February 23, 1924 (Petitioner's Exhibit 5) and the waiver of February 27, 1924 (Petitioner's Exhibit 6), the Commissioner, D. H. Blair, acceded to and acquiesced in the acts of the petitioner in supplanting the waiver of January 8, 1924, with the waiver of February 23, 1924, and in supplanting the waiver of February 23, 1924, with the waiver of February 27, 1924, and the act and intention of the petitioner in respect of said transactions were manifestly known to the Commissioner.

6. That in attempting to assess the deficiency assessment of $34,555.68 the respondent purported to act under the Internal Revenue Act of 1926.

7. That the deficiency assessment of $34,555.68, if lawfully made, was made under the Internal Revenue Act of 1926.

8. That the statutory period of assessment, as extended by waiver and/or by statute, had expired prior to the alleged date of the deficiency assessment of $34,555.68 for the year 1918.

24 9. That the statutory period for deficiency assessment having expired, the respondent is forced, in its justification of the deficiency assessment of $34,555.68, to depend upon extension thereof by waiver, and it is necessary for the respondent to elect as to whether it shall stand upon the waiver of January 8, 1924 (Petitioner's Exhibit 4), the waiver of February 23, 1924 (Petitioner's Exhibit 5), or the waiver of February 27, 1924 (Petitioner's Exhibit 6), as the waiver so chosen by election may be extended by the waiver of October 30, 1924 (Petitioner's Exhibit 7).

10. That the writing by the respondent in longhand of the figures and word "1918 Expires 6/15/26" appearing on Petitioner's Exhibit 8, which bears date September 16, 1925, constitutes an admission by the respondent that it had accepted the waiver of February 23, 1924 (Petitioner's Exhibit 5) as displacing and rendering null and void the waiver of January 8, 1924 (Petitioner's Exhibit 4).

11. That the respondent's letter to the petitioner dated October 25, 1924 (Petitioner's Exhibit 13) in and of itself shows that the respondent had, on or before the date of said letter, elected to stand upon the waiver of February 23, 1924 (Petitioner's Exhibit 5) and

had treated as null and void the waiver of January 8, 1924 (Petitioner's Exhibit 4), and had, for its own purposes, disregarded, as expiring aforetime, the waiver of February 27, 1924 (Petitioner's Exhibit 6).

12. That the respondent's letter to the petitioner dated October 25, 1924 (Petitioner's Exhibit 13) within itself constitutes an admission that the respondent had, on or before the date of said letter, elected to stand upon the waiver of February 23, 1924 (Petitioner's Exhibit 5) and had treated as null and void the waiver of January 8, 1924 (Petitioner's Exhibit 4), and had, for its own purposes, disregarded, as expiring aforetime, the waiver of February 27, 1924 (Petitioner's Exhibit 6).

13. That the words "any waivers already on file with the Bureau," as they occur in the waiver of February 23, 1924 (Petitioner's Exhibit 5) and the waiver of October 30, 1924 (Petitioner's Exhibit 7) can only refer to waivers on file which were in force and effect at the time of filing of said waivers of February 23, 1924, and October 30, 1924, the mere physical presence of the antecedent waivers in the files of the respondent being, as a matter of law, insufficient.

14. That the time for the lawful making of the deficiency assessment for the year 1918 cannot, by any interpretation of the law and the facts, be extended beyond June 27, 1926.

15. That if the respondent, relying on the provisions of the Act of 1926, seeks to obtain, by reason of the suspension of the operation of waivers then in force, time additional unto said waivers, and this court sustains said contention of the respondent, then the period thereby gained will expire June 27, 1926.

16. That judgment should be entered in favor of the petitioner in the sum of $57,544.24, together with interest thereon from October 11, 1927 to the date of the bringing of this suit, together with interest on said sums from the date of the bringing of this suit to the date of judgment.

17. That even though this court should rule that the deficiency assessment of $34,555.68 for the year 1918 was lawful, still there is due to the petitioner, on account of interest from it unlawfully withheld, the sum of $19,417.61, together with interest thereon from October 11, 1927 to the date of the bringing of this suit, together with interest on said sums from said date of bringing of this suit to the date of judgment.

18. That even though this court should rule that the deficiency assessment of $34,555.68 for the year 1918 was lawful, still there is due to the petitioner, on account of interest from it unlawfully withheld, the sum of $15,634.52, together with interest thereon from July 27, 1926 to the date of the bringing of this suit, together with interest on said sums from said date of bringing of this suit to the date of judgment.

19. That no notice was given to the petitioner of the deficiency assessment of $34,555.68 within a reasonable time, and said deficiency assessment is, by reason of the respondent's failure to give notice within a reasonable time, void.

The court, in an opinion handed down April 6, 1931, found
26 that the assessment of $34,555.68 was not made until July 27, 1926 following the serving of notice by the respondent of an intention to assess; that the Bureau, following the actual assessment, sent no other or further notice of the additional assessment until October 1927, when the petitioner received a certificate of overassessment respecting the tax for the year 1917 which showed that it had been credited against the additional taxes for the years 1918 and 1919, but the court ruled as a matter of law as follows:

"I do not find in either the Revenue Act of 1924 or the Revenue Act of 1926 any provision which required the Commissioner to give to the petitioner any notices other than those which appeared to have been given in this case. In other words, I find that the Commissioner complied with all the requirements of law respecting notice of the additional assessment."

The Court made the following findings of fact and ruling of law:

Findings of fact and ruling of law

"The return of 1918 income was filed on the sixteenth day of June 1919, and the period within which additional assessments could be made under statutes then extant expired on the sixteenth day of June 1924. On January 8, 1924, the taxpayer signed a waiver which extended the period within which the assessment of 1918 taxes could be made to January 8, 1925. On February 23, 1924, it signed another waiver respecting the 1917 and 1918 taxes, which operated to extend the time for assessing those taxes to January 8, 1927. On February 27, 1924, it signed a third waiver respecting the 1918 and 1917 taxes, but this waiver only operated to extend the time for one year from its date. It will be noted that this waiver was for a lesser period than the second waiver signed February 23, 1924. On October 30, 1924, the petitioner signed a fourth waiver respecting the assessment of 1918 taxes which contained the following provisions:

"'This waiver is in effect from the date it is signed by the taxpayer and will remain in effect for a period of one year after the expiration of the statutory period of limitation within which assessments of taxes may be made for the year or years mentioned,
27 or the statutory period of limitation as extended by Section 277 (b) of the Revenue Act of 1924 or by any waivers already on file with the Bureau.'

"All of these waivers were executed by the taxpayer, and the authority of the officer who signed is not questioned. They were also

signed on behalf of the United States by the Commissioner of Internal Revenue.

"It is the contention of the petitioner that the first and second waivers given under dates of January 8, 1924, and February 23, 1924, should be wholly disregarded. It is the petitioner's claim, made in argument, that the third waiver of February 27, 1924, extending the time to February 27, 1925, was given in substitution for the earlier waivers, and that the waiver of October 30, 1924, extended the time only to February 27, 1926.

"From correspondence between the petitioner and the Bureau, it appears that certain subordinates in the Internal Revenue Bureau proceeded upon an erroneous belief that the statutory period of limitation as extended would expire early in 1925. On October 24, 1924, the chief of the section wrote the petitioner asking for a renewal waiver for the years 1917 and 1918, stating that these were desirable in view of the early expiration of the waivers at present on file for these years. Presumably it was in response to the communication that the fourth waiver of October 30, 1924, was given.

"It must be conceded that if at the time when this letter was written the third waiver (that of February 27, 1924) was to be treated as the only waiver on file in the Bureau, then the period of limitation would have expired February 27, 1925, but if, as was the fact, other waivers then on file extended the time to January 8, 1926, the waiver of October 30, 1924, operated to further extend the period to January 8, 1927. Whether this statement that the waivers were presently to expire was based upon a definite understanding between the parties that the waivers of January 8, 1924, and of February 23, 1924, were to be treated as void, or whether it was due to the fact that the writer was not aware that they were on file, are matters of conjecture. Upon the evidence, it is equally probable that more
28 than one clerk in the Bureau was dealing with the taxpayer and for that reason unnecessary waivers were obtained. The fact still remains that they were all given by the taxpayer and that none of them had been withdrawn. Nor does the evidence establish any agreement that they were not to be given full force and effect as waivers duly filed with the Bureau. I must find, therefore, on the evidence that they were all on file at the time the petitioner signed the waiver of October 30, 1924, wherein it expressly assented to an extension of the time for one year beyond the statutory period of limitation as extended by any waiver already on file with the Bureau. The extent of its assent must be gathered from the writing on its behalf, and we cannot vary its terms and give it an effect as if it read 'or the statutory period as extended by one of the three waivers already on file with the Bureau.'"

The court further found and ruled as follows:

". . . I have concluded that the petitioner by its agreements extended the period of limitation to January 8, 1927.

"I find and rule that the assessment of $34,555.68 was valid and the credit to that extent of the over-payment was a proper credit."

Upon the question of interest raised by the petitioner's prayer for an accounting in respect of interest, the court found and ruled as follows:

"As to the question of interest, the credits and refund having been made subsequent to the passage of the Revenue Act of 1926, the liabilities of the defendant for interest on the over-payment must be determined with reference to the provisions of that statute. United States v. Boston Buick Co. (decided February 2, 1931); 75 L. Ed. 274.

"Section 1116 (a) of that Act is as follows:

"'Upon the allowance of a credit or refund of any internal-revenue tax erroneously or illegally assessed or collected . . . or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or
29 refund at the rate of 6 per centum per annum from the date such tax, . . . or sum was paid to the date of the allowance of the refund, or in the case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment made under the Revenue Act of 1921, the Revenue Act of 1924, or this Act, then to the date of the assessment of that amount.'

"The government, in the case of the credits, refused to adopt the date of the assessment as the date to which interest should be computed but adopted the due dates of the amounts against which the credits were taken and in respect of the additional tax for 1918 took March 15, 1919, as the due date and March 15, 1920, as the due date for the 1919 additional assessment. Inasmuch as the over-payments were all made subsequent to March 15, 1918, no interest was allowed on the amount credited against the additional 1918 tax, and interest on the amount credited against the 1919 additional assessment was completed only to March 15, 1920. The petitioner contends that it is entitled to have the interest computed from the dates of the over-payments to July 27, 1926, the date of the additional assessments for the years 1918 and 1919.

"The application and interpretation of section 1116 (a) has been construed by the Court of Claims in Riverside & Dan River Cotton Mills, Inc. v. United States, 37 F. (2d) 965; Graniteville Manufacturing Co. v. United States, 39 F. (2d) 746; National Equipment Co. v. United States, 39 F. (2d) 757; and that court has uniformly held that when an over-payment of taxes has been credited against a deficiency for any year prior to 1921 'interest should be allowed from the date of the over-payment to the due date of the amount against which the credit is taken, and that the words "due date" used in this section mean the date fixed by the statute for the payment of the tax, or the several instalments thereof. . . .' Riverside

& Dan River Cotton Mills, Inc. v. United States, supra (at page 969), and was met by the court in the following language:

"'Plaintiff lays much stress upon the provisions of sections
30 280 of the Revenue Act of 1924 (26 U. S. C. A. Sec. 1064 note) and 283 of the Revenue Act of 1926 (26 U. S. C. A. Sec. 1064) as showing, as it insists, that the additional assessment here involved was an assessment made under the Revenue Act of 1926, but, in our opinion, this contention is without force. The Revenue Act of 1924 repealed the Revenue Act of 1921, but provided that that act should remain in force for the assessment and collection of all taxes imposed by such Act, and the Revenue Act of 1926 repealed the Revenue Act of 1924, but contained a similar provision relating to the previous Act in force for the assessment and collection of all taxes imposed thereby. Section 280 of the Revenue Act of 1924 and section 283 of the Revenue Act of 1926 related to the procedure to be followed in the determination, assessment, and collection of deficiencies under those acts. These sections did not confer the authority to make an assessment for prior years; that authority was conferred by the prior revenue acts which were retained in force for that purpose, and it was this that Congress had in mind when it provided in section 1116 (26 U. S. C. A. Sec. 153 note) as to the payment of interest on credits in case of an additional assessment "made under" certain acts.'

"I agree with the conclusions reached by the learned court in the case of Riverside & Dan River Cotton Mills, Inc. v. United States, supra, and accept as adequate the reasons stated in the opinion. It follows, therefore, that the defendant, in computing the interest, proceeded upon a proper construction of the Act which imposed its obligations to pay interest and that the amount allowed as interest on the over-payment was substantially correct. There seems to be a slight error in computation of the interest on the second payment constituting the over-payments for 1917. The date of the payment was August 8, 1919, instead of August 18, 1919. This would entitle the petitioner to ten days' additional interest computed upon $4,710.64 credited against the 1919 taxes and upon $22,013.06, the balance of the refunded over-payment of 1917 taxes made Au-
gust 8, 1919. Ten days' interest on these two amounts
31 would aggregate $44.07, for which amount the petitioner is entitled to recover."

The foregoing constitute all of the facts material to the issues raised by these pleadings.

The petitioner, being aggrieved

(1) By the exclusion of the aforesaid oral evidence as set forth in the aforesaid offer of proof, and

(2) By the refusal of the court to grant the aforesaid rulings of law requested by the petitioner, and

(3) By the aforesaid findings and rulings of the court, now excepts to the refusal of the court to admit the aforesaid parole evidence and to the refusal of the court to grant the said requests for rulings, and to the findings and rulings of the court on matters

of law, and therefore brings this its bill of exceptions and prays that it may be allowed.

By its Attorneys.

JOSEPH WIGGIN,
JOHN W. LOWRANCE,
LISPENARD B. PHISTER.

December 2, 1931. Allowed.

E. H. B., *D. J.*

Assented to.

FREDERICK H. TARR,
United States Attorney,
By J. DUKE SMITH,
Special Assistant to the United States Attorney,
Attorney for Respondent.

EXHIBITS

Petitioner's exhibit 1

[On printed letterhead of Bertelsen & Petersen Engineering Company]

EAST BOSTON, MASSACHUSETTS, *October 11, 1927.*

COLLECTOR OF INTERNAL REVENUE,
Park Square Bldg., Boston, Mass.

DEAR SIR: This is to acknowledge receipt of your check for $87,119.59, which is absolutely accepted under protest, inas-
32 much as you have applied an outlawed tax for 1918 against our legally allowable refund.

Very truly yours,

BERTELSEN & PETERSEN ENGINEERING CO.
By

Original of this letter rec'd 10/11/27

THOMAS W. WHITE, *Collector.*
By J. H. RUSSELL, *Deputy.*

Petitioner's exhibit 2

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington.

Income Tax Unit IT:R:CC–

CERTIFICATE OF OVERASSESSMENT

Number: 452133. Allowed: $91,570.34. Schedule No. 21448.

BERTELSEN AND PETERSEN ENGINEERING CO.,
256 Border Street., East Boston, Massachusetts.

SIRS: An audit of your income tax return, Forms 1031 and 1103, and a consideration of all the claims (if any) filed by you for the

year 1917 indicates that the tax assessed for this year was in excess of the amount due:

Tax previously assessed:	
Original, Account #1752847, April 1918, List, Page 1395, Line 17	$277,586.25
Additional, August 1920, List, Page 13, Line 1	6,510.54
Total tax assessed	284,096.77
Total tax due	192,526.43
Overassessment	91,570.34

In a Bureau letter of recent date, you were advised of the amount and manner of establishing your correct tax liability which resulted in the above computation.

The amount of the overassessment will be abated, credited, or
33 refunded as indicated below. (You will be relieved from the payment of any amount abated: if an overpayment has been made and other taxes are due, credit will be made accordingly, and any amount refundable is covered by a Treasury check transmitted herewith.)

Included in the accompanying check is interest in the amount stated below, allowed on the refund or credit.

Respectfully,

C. R. NASH,
Assistant to the Commissioner.
By I. F. ENES,
Head of Division.

Abated: $
Credited: $34555.68 $4710.64.
Year: 1918A 1919A.
Account No. July 1926 O–OC Mar. 1925 P 1 L7C.
Refunded: $52304.02.
Interest: $23115.75.
Instructions executed. Signature, T. W. White, Collector. Int. Rev., District Mass.
JHR.

Petitioner's exhibit 3

EXHIBIT A

UNITED STATES OF AMERICA,
TREASURY DEPARTMENT,
Washington, October 10, 1929.

Pursuant to Section 882 of the Revised Statutes, I hereby certify that the annexed are true copies of Assessment Certificate and that portion of the July 1926, No. 1, income tax assessment list—Massachusetts collection district—showing an additional assessment of $34,555.68 and interest in the amount of $730.87 for 1918, against Bertelsen and Petersen Engineering Company, East Boston, Massachusetts, the originals of which are on file in this Department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

34 By direction of the Secretary:

[SEAL]

F. A. BIRGFELD,
Chief Clerk, Treasury Department.

H. C. C. JP WWB EF• F.F.T. CMC.

ASSESSMENT CERTIFICATE COMMISSIONER'S ASSESSMENT LIST

District of Massachusetts, month July, No. 1	Year, 1926
Additional Assessments made by Commissioner:	
Personal	$25 127 31
Corporation	434 000 23
Total Assessments	459 127 54

I hereby certify that I have made inquiries, determinations, and assessments of taxes, penalties, etc., of the above classification specified in these lists, and find that the amounts of taxes, penalties, etc., stated as corrected and as specified in the supplementary pages of this list made by me are due from the individuals, firms, and corporations opposite whose names such amounts are placed, and that the amount chargeable to the collector is as above.

Dated at Washington, D. C.

C. R. NASH,
Acting Commissioner of Internal Revenue.

Office of Commissioner of Internal Revenue, Jul 3, 1926.

WWS CRN JG. WS

WP Assessment List. Page No. 0

District Massachusetts Income Tax July 1926, No. 1

Bertelsen & Peterson Engineering Co., 256, 264 Border St., East Boston, Mass., July 00, C No. 1.

Debit	$34,555.68
Int	730.87
New Balance	35,286.55

Remarks 1918 403152 RAR Waiver OL 1/23/26 0 Cla $730.87 #999681-2.

[Stamped:]

Collector, withhold demand pending comparison with 1917 over-assessment

35 *Petitioner's Exhibit 4*

EXHIBIT B

UNITED STATES OF AMERICA,

TREASURY DEPARTMENT,

Washington, December 8, 1930.

Pursuant to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of the United States), I hereby certify that the annexed is a true copy

of Income and Profits Tax Waiver for 1918, dated January 8, 1924, filed by Bertelsen and Petersen Engineering Company, East Boston, Massachusetts, on file in this Department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

F. A. BIRGFELD,
Chief Clerk, Treasury Department.

H. C. C. Rms W W B amr R E. S. C M. C. B
IT:C A M S 2505 P E W. App.

JANUARY 8, 1924.

INCOME AND PROFITS TAX WAIVER

In pursuance of the provisions of subdivision (d) of Section 250 of the Revenue Act of 1921, Bertelsen & Petersen Engineering Co. of East Boston, Mass., and the Commissioner of Internal Revenue, hereby consent to a determination, assessment, and collection of the amount of income, excess-profits, or war-profits taxes due under any return made by or on behalf of the said Corporation for the years 1918 under the Revenue Act of 1921, or under prior income, excess-profits, or war-profits tax Acts, or under Section 38 of the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes", approved August 5, 1909. This waiver is in effect for one year from the date it is signed by the taxpayer.

BERTELSEN & PETERSEN ENGINEERING CO.,
Taxpayer.

[SEAL] By JENS BERTELSEN, *President.*

D. H. BLAIR, *Commissioner.*

36 If this waiver is executed on behalf of a corporation, it must be signed by such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which, the seal, if any, of the corporation must be affixed.

[Stamped:]

Received Feb 14, 1925. Special Assessment Section

Petitioner's Exhibit 5

EXHIBIT C

UNITED STATES OF AMERICA,
TREASURY DEPARTMENT,
Washington, December 8, 1930.

Pursuant to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of

the United States), I hereby certify that the annexed is a true copy of Income and Profits Tax waiver for 1916–1917 renewed, dated February 23, 1924, filed by Bertelsen and Petersen Engineering Company, East Boston, Massachusetts, on file in this Department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

[SEAL] F. A. BIRGFELD,

Chief Clerk, Treasury Department. B.

H. H. C. Rms W W B amr R. E. S. C. M. C.

IT:C A M S 2505-PEW-App.

FEBRUARY 23, 1924.

INCOME AND PROFITS TAX WAIVER

In pursuance of the provisions of subdivision (d) of Section 250 of the Revenue Act of 1921, Bertelsen & Petersen Eng. Co. of East Boston, Mass., and the Commissioner of Internal Revenue, hereby consent to a determination, assessment and collection of the amount of income, excess-profits, or war-profits taxes due under return made by or on behalf of the said Taxpayer for the years 1918–1917,
37 Renewed under the Revenue Act of 1921, or under prior income, excess-profits, or war-profits tax Acts, or under section 38 of the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes", approved August 5, 1909. This waiver is in effect from the date it is signed by the taxpayer and will remain in effect for a period of one year after the expiration of the statutory period of limitation, or the statutory period of limitation as extended by any waivers already on file with the Bureau, within which assessments of taxes may be made for the year or years mentioned.

BERTELSEN & PETERSEN ENG. CO.,
Taxpayer.

[SEAL] By PAUL J. BERTELSEN, *Vice-Pres.*

D. A. BLAIR, *Commissioner.*

If this waiver is executed on behalf of a corporation, it must be signed by such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which, the seal, if any, of corporation must be affixed.

[Stamped:]

Received Feb 14 1925 Special Assessment Section

Petitioner's exhibit 6

EXHIBIT D

UNITED STATES OF AMERICA,
TREASURY DEPARTMENT,
Washington December 8, 1930.

Pursuant to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of the United States), I hereby certify that the annexed is a true copy of Income and Profits Tax waiver for 1918 (1917 extended), dated February 21, 1924, filed by Bertelsen and Petersen Engineering Company, East Boston, Massachusetts, on file in this Department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

38 By direction of the Secretary of the Treasury:
[SEAL] F. A. BIRCHFIELD,
Chief Clerk, Treasury Department. B.

H. H. C. Rms W W Bamr R. E. S. C. M. C. B

I T:C A:M S 2506-PEW-App.

FEBRUARY 27, 1924.

INCOME AND PROFITS TAX WAIVER

In pursuance of the provisions of subdivision (d) of Section 250 of the Revenue Act of 1921 Bertelsen & Petersen Engineering Co of East Boston, Mass., and the Commissioner of Internal Revenue, hereby consent to a determination, assessment, and collection of the amount of income, excess-profits, or war-profits taxes due under any return made by or on behalf of the said corporation for the years 1918 (1917 extended) under the Revenue Act of 1921, or under prior income, excess-profits, or war-profits tax Acts, or under Section 38 of the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August 5, 1909. This waiver is in effect for one year from the date it is signed by taxpayer.

BERTELSEN & PETERSEN ENGINEERING CO.,
Taxpayer.

[SEAL] By JENS BERTELSEN, *Pres.*
D. H. BLAIR, *Commissioner.*

If this waiver is executed on behalf of a corporation, it must be signed by such officer or officers of the corporation as are empowered

under the laws of the State in which the corporation is located to sign for the corporation, in addition to which, the seal, if any, of the corporation must be affixed.

[Stamped:]

Received Feb 14 1925 Special Assessment Section

29 *Petitioner's exhibit 7*

EXHIBIT E

UNITED STATES OF AMERICA,
TREASURY DEPARTMENT,
Washington, December 8, 1930.

Pursuant to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of the United States), I hereby certify that the annexed is a true copy of Income and Profits Tax Waiver for 1918, dated October 30, 1924, filed by Bertelsen and Petersen Engineering Company, East Boston, Massachusetts, on file in this Department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

[SEAL]

F. A. BIRDSELL,
Chief Clerk, Treasury Department.

H. C. C. Rms W W Bamr R. E. S. C. M. C. B

IT:2113:4

OCTOBER 30, 1930.

INCOME AND PROFITS TAX WAIVER

In pursuance of the provisions of existing Internal Revenue Laws, Bertelsen & Petersen Engineering Company a taxpayer, of 256 Border St., East Boston, Mass., and the Commissioner of Internal Revenue, hereby consent to extend the period prescribed by law for a determination, assessment, and collection of the amount of income excess-profits, or war-profits taxes due under any return made by or on behalf of said taxpayer for the year 1918 under the Revenue Act of 1924, or under prior income, excess-profits, or war-profits tax Acts, or under Section 38 of the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes", approved August 5, 1909. This waiver is in effect from the date it is signed by the taxpayer and will remain in effect for a period of one year after the expiration of the
40 Statutory period of limitation within which assessments of taxes may be made for the year or years mentioned, or the

statutory period of limitation as extended by Section 277 (b) of the Revenue Act of 1924, or by any waivers already on file with the Bureau.

BERTELSEN & PETERSEN ENG. CO.,
Taxpayer.

[SEAL] PAUL J. BERTELSEN, *Vice Pres.*

D. H. BLAIR, *Commissioner.*

If this waiver is executed on behalf of a corporation, it must be signed by such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which, the seal, if any, of the corporation must be affixed.

[Stamped:]

Received Feb. 14 1925 Special Assessment Section

Petitioner's exhibit 8

UNITED STATES OF AMERICA,
TREASURY DEPARTMENT,
Washington December 8, 1930.

Pursuant to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of the United States), I hereby certify that the annexed is a true copy of copy of letter dated September 16, 1925 (with statement attached, minus Agreement (Form A) mentioned therein), to Bertelsen and Petersen Engineering Company, East Boston, Massachusetts, from J. G. Bright, Deputy Commissioner, on file in this Department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

[SEAL] F. A. BIRDSEYE,
Chief Clerk, Treasury Department.

H. C. C. Rms W W Bmr R. E. S. C. M. C. B

41

TREASURY DEPARTMENT,
Washington.

Office of Commissioner of Internal Revenue

Address reply to Commissioner of Internal Revenue and refer to IT:E:SH SBD-10443 A-5983

BARTELSEN AND PETERSEN ENGINEERING COMPANY,
East Boston, Massachusetts.

SIRS: An audit of your income and profits tax returns for the years 1917 and 1918 has resulted in the determination of a deficiency

in tax of $34,555.68 for the year 1918, and an overassessment for the year 1917 of $91,570.34, as shown in the attached statement.

You are granted 30 days from the date of this letter within which to present a protest, supported by additional evidence or brief, against this determination of a deficiency. Any additional evidence submitted should be under oath. Upon request submitted within the period mentioned, you will also be granted a hearing in the Bureau with reference to the matter.

A request for a hearing should contain (a) the name and address of the taxpayer; (b) in the case of a corporation, the name of the State of incorporation; (c) a designation by date and symbol of the notice or notices with respect to which the hearing is desired; (d) a designation of the year or years involved and a statement of the amount of tax in dispute for each year; (e) an itemized schedule of the findings of the Unit to which the taxpayer takes exception; and (f) a summary statement of the grounds upon which the taxpayer relies in connection with each exception.

If, after consideration of any additional evidence submitted and any arguments advanced by you, a deficiency is finally determined by the Bureau to be due from you, you will, in accordance with the provisions of Section 274 of the Revenue Act of 1924, be advised by registered mail of the final determination of the Commissioner as to the amount of the deficiency, and allowed 60 days from the mailing of the letter in which to file an appeal to the United States Board of Tax Appeals in the event you do not acquiesce in such final determination.

42 If you acquiesce in the determination of a deficiency as disclosed in this letter and the accompanying statements, you are requested to sign the inclosed agreement consenting to the assessment of such deficiency, and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:E:SH-SBD-10443 A-5983. In the event that you acquiesce in a part of the determination, the agreement should be executed with respect to the items agreed to.

Respectfully,

J. G. BRIGHT,
Deputy Commissioner.

1918 Expires 6/15/26
Inclosures: Statements Agreement—Form A.
S. B. D. 5/29/25 P A S D 5/29/25 H E W 6MN F E B 6/1/25
IFE 6/5/25 BRC 8/29/25 AHD 9/8/25

[Stamped: Sep. 16 1925]

STATEMENT

IT:E:SM SBD-10443 A-5983

In re: Bertelsen and Petersen Engineering Co., East Boston, Massachusetts

Year	Deficiency in Tax	Overassessment
1917		$91,570.34
1918	$34,555.68	

Net Overassessment $57,014.66

You are advised that after careful consideration and review, your application under the provisions of Sections 210 and 327 for assessment of your profits tax as prescribed by Sections 210 and 328 of the Revenue Acts of 1917 and 1918, respectively, has been allowed. Your profits tax is based upon a comparison with a group of representative concerns which, in the aggregate, may be said to be engaged in a like or similar trade or business to that of your company.

The result of the audit under the above-mentioned provisions is as follows:

43 1917

NET INCOME

Net income shown by field investigation	$432,711.71

COMPUTATION OF TAX

Excess profits tax (Section 210)		$177,195.45
Net income as above	$432,711.71	
Less: Excess profits tax	177,195.45	
Amount taxable at 2%	$255,516.26	5,110.33
Amount taxable at 4%	$255,516.26	10,220.65
Total tax assessable		$192,526.43
Tax previously assessed:		
Original, Account No. 1752847, April 1918, List, Page 1396, Line 17		$277,586.23
Additional, August 1920, List, Page 31, Line 1		6,510.54
Total tax assessed		$284,096.77
Total tax due		192,526.43
Overassessment		$91,570.34

In re: Bertelsen and Petersen Engineering Co.

In accordance with the above conclusions, your claims for the refund of $46,715.09 and $75,000.00, aggregating $121,715.09, will be rejected for $30,144.75.

1918

Net income shown in Bureau letter dated December 23, 1924			$390,389.29
COMPUTATION OF TAX			
Profits Tax (Section 328)			$260,306.85
Net income as above		$390,389.29	
Less:			
Profits tax	$260,306.85		
Exemption	2,000.00	262,306.85	
Amount taxable at 12%		$137,080.44	16,449.65
Total tax assessable			$276,756.50
44			
Tax previously assessed:			
Original, Account No. 403152		$242,384.72	
Less:			
Interest		345.15	
		$242,039.57	
Additional, August 1930, List, Page 31, Line 2		163.25	242,202.82
Deficiency in Tax			$34,553.68

In accordance with the above conclusions, your claims for the refund of $51,173.57 and $75,000.00, aggregating $126,173.57, will be rejected in full.

The Collector of Internal Revenue for your district will be officially notified of the rejection.

The overassessment shown above will be made the subject of a Certificate of Overassessment which will reach you in due course through the office of the Collector of Internal Revenue for your district and will be applied by that official in accordance with Section 281 (a) of the Revenue Act of 1924.

Petitioner's exhibit 9

UNITED STATES OF AMERICA, TREASURY DEPARTMENT,
Washington, December 8, 1930.

Pursuant to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of the United States), I hereby certify that the annexed is a true copy of copy of letter dated December 5, 1925 (minus enclosure mentioned therein), to Bertelsen and Petersen Engineering Company, East Boston, Massachusetts, from C. R. Nash, Assistant to the Commissioner, on file in this Department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

[SEAL] F. A. BIRGFELD,
Chief Clerk, Treasury Department.

H. C. C. Rms W W Bamr R E. S. C M. C. B

BERTELSEN AND PETERSEN ENGINEERING COMPANY,
East Boston, Massachusetts.

SIRS: Reference is made to your income and profits tax return for the year ended December 31, 1918, and to your protest against the rate allowed in the assessment of your profits tax under the provisions of Section 328 of the Revenue Act of 1918, as set forth in Bureau letter dated September 16, 1925.

Your protest is now under consideration, and you will be advised of the final determination of the tax liability at the earliest practicable date.

However, the statutory period as extended by the waiver now on file, within which the Commissioner may assess additional taxes for the year 1918, will expire presently and in order to avoid the necessity of making an assessment prior to such consideration, it is requested that you sign and return to this office within ten days from the date of this letter the enclosed waiver for the year 1918, by which you will note that you agree to an extension of time within which additional taxes may be assessed, if any are found to be due, to December 31, 1926, except as provided in the form of waiver.

In your letter of transmittal, please refer to IT:E:SM, SBD–A-5983.

Respectfully,

C. R. NASH,
Assistant to the Commissioner.
By
Acting Chief of Section.

S. B. D. 12/5/25 P. A. SD 12/5/25 Hew 12/5/25

[Stamped: Mailed Dec. 5, 1925]

Petitioner's exhibit 10

UNITED STATES OF AMERICA,
TREASURY DEPARTMENT,
Washington, December 8, 1930.

Pursuant to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of the United States), I hereby certify that the annexed is a
46 true copy of copy of letter dated January 14, 1926, to Bertelsen and Petersen Engineering Company, East Boston, Massachusetts, from C. R. Nash, Assistant to the Commissioner, on file in the Department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

[SEAL] F. A. BIRGFELD,
Chief Clerk, Treasury Department.

H. C. C. Rms. W. W. Bamr. R. E. S. C. M. C.

IT:E:S M S B D-10443 A-5983

BERTELSEN AND PETERSEN ENGINEERING COMPANY,
256 Border Street, East Boston, Mass.

SIRS: Receipt is acknowledged of your letter dated December 30, 1925, wherein you state that you accept the adjustment indicated in Bureau letter dated September 16, 1925, for the year 1917, resulting in an overassessment of $91,570.34 and request that the 1917 case be closed without waiting for the final determination of your tax liability for the year 1918.

You are advised that this office is unable to comply with you request for the reason that any additional tax which may be found to be due for the year 1918 will be offset against the overassessment for 1917, and as the final determination of the 1918 case has not yet been made, the 1917 case may not be closed at this time.

Any further communication relative to this case should bear the symbols IT:E:SM-SBD-10443, A-5983.

Respectfully,

C. R. NASH,
Assistant to the Commissioner.
By
Acting Chief of Section.

S. B. D. 1/11/26 P. A. S. D. 1/11/26 Hawk 1/13/26 W. A. J. 1/13/26

[Stamped: Jan. 14, 1926]

47 *Petitioner's exhibit 11*

UNITED STATES OF AMERICA,
TREASURY DEPARTMENT,
Washington, December 8, 1930.

Pursuant to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of the United States), I hereby certify that the annexed is a true copy of copy of letter dated January 23, 1926 (with statement attached, minus Agreement (Form A) mentioned therein), to Bertelsen and Petersen Engineering Company, East Boston, Massachusetts, from D. H. Blair, Commissioner, on file in this Department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

[SEAL] F. A. BIRGFELD,
Chief Clerk, Treasury Department.

H. C. C. Rms W M Bamr R. E. S. C. M. C. S W W

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, Jan. 23, 1926.

IT:E:SM-60D SBD-10443 A-5983

Extension letter 283-C—mailed 3/20/26

BERTELSEN AND PETERSEN ENGINEERING COMPANY,
East Boston, Massachusetts.

Sirs: An audit of your income and profits tax returns for the years 1917 and 1918 has resulted in the determination of a deficiency in tax of $34,555.68 for the year 1918 and an over-assessment for the year 1917 of $91,570.34, as shown in the attached statement.

In accordance with the provisions of Section 274 of the Revenue Act of 1924, you are allowed 60 days from the date of mailing of this letter within which to file an appeal contesting in whole or in part the correctness of this determination. Any such appeal must be addressed to the United States Board of Tax Appeals, Wash-
48 ington, D. C., and must be mailed in time to reach that Board within the 60-day period.

Where a taxpayer has been given an opportunity to appeal to the Board of Tax Appeals and has not done so within the 60 days prescribed and an assessment has been made, or where a taxpayer has appealed and an assessment in accordance with the final decision on such appeal has been made, no claim in abatement in respect of any part of the deficiency will be entertained.

If you acquiesce in this determination and do not desire to file an appeal, you are requested to sign the inclosed agreement consenting to the assessment of the deficiency and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:E:SM-60D SBD-10443 A-5983. In the event that you acquiesce in a part of the determination, the agreement should be executed with respect to the items agreed to.

Respectfully,

D. H. BLAIR,
Commissioner.
By C. R. NASH,
Assistant to the Commissioner.

Inclosures: Statements Agreement—Form A AB-1.

S. B. D. 1/16/26 P A S (D) 1/16/26 A T W 1/18/26 P E W 1-18-26

STATEMENT

IT:E:SM:60D SBD-10443 A-5983

In re: Bertelsen and Petersen Engineering Company, East Boston, Massachusetts

Years Examined	Deficiency in Tax	Overassessment
1917		$91,570.34
1918	$34,555.68	

Net overassessment $57,014.66

Reference is made to your protest dated October 15, 1925, and to supplemental brief filed October 28, 1925, against the allowance of your application for assessment of your profits tax for the year 1918 under the provisions of Section 328 of the Revenue Act of 1918, as set forth in Bureau letter dated September 16, 1925.

49 After a careful review of your protest and of all the evidence submitted in support of your contentions, you are advised that the Bureau holds that the allowance of your application is based on a comparison with representative concerns, similarly circumstanced, as nearly as may be, to your company. Accordingly, the conclusions set forth in the above-mentioned letter are sustained.

In addition to the rejection of the claims referred to in Bureau letter dated September 16, 1925, your two claims for the refund of $40,000.00 each, for the years 1917 and 1918, respectively, will be rejected in full.

The Collector of Internal Revenue for your district will be officially notified of the rejection.

The overassessment shown above will be made the subject of a certificate of overassessment which will reach you in due course through the office of the Collector of Internal Revenue for your district and will be applied by that official in accordance with Section 281 (a) of the Revenue Act of 1924.

The right of appeal to the United States Board of Tax Appeals as indicated on page one of this letter, refers only to any deficiency in tax indicated herein, inasmuch as there is no provision in the Revenue Act of 1924 granting the right of appeal against the determination of any overassessment found upon any audit of your returns.

A copy of this letter is being forwarded to your representative, Mr. J. A. Vanden Heuvel, 203-205 Metropolitan Bank Building, Washington, D. C.

Petitioner's exhibit 12

UNITED STATES OF AMERICA,
GENERAL ACCOUNTING OFFICE.

Pursuant to the Act of June 10, 1921, 42 Stat. 24, I hereby certify that the annexed documents, numbered B-1, B-2 and B-3, are true copies of the official documents now on file in the General Ac-

counting office in the following case: Bertelsen & Petersen Engineering Company *v.* United States.

In witness whereof, I have hereunto set my hand and caused
50 the seal of the General Accounting Office to be affixed this 8th day of November, in the year 1930, at Washington.

[SEAL] JUSTIN R. GINN,
Assistant Comptroller General of the United States.

53 *Petitioner's exhibit 13*

IT:CA:2113-4 OCT. 25, 1924.

BERTELSEN & PETERSEN ENGINEERING CO.,
254 Border St., East Boston, Mass.

SIRS: Receipt is acknowledged of letter dated October 16, 1924, of J. A. Vanden Heuvel and Company, Washington, D. C., enclosing brief covering 1918 to 1920, prepared on behalf of your corporation.

You are advised that a conference has been arranged for 1:45 o'clock, November 21, 1924, Room 114, Treasury Annex No. 2, Fifteenth Street and Ohio Avenue, Northeast, Washington, D. C.

In view of the early expiration of the waivers at present on file from your corporation for the years 1917 and 1918, and in view of the fact that the statutory period within which the Commissioner may assess additional taxes for the year 1919, will expire presently, it is requested that renewal waivers for the years 1917 and 1918, and waiver for 1919, be executed by your corporation and forwarded to this office.

Blank form of waivers are enclosed.

Respectfully,

J. G. BRIGHT,
Deputy Commissioner.
By
Chief of Section.

Enclosures:
3 waiver forms.

Petitioner's exhibit 14

BOSTON, MASS., *November 28, 1927.*

Received today from James V. Giblin Company, 456 Park Square Building, Boston, Mass., Refund Claims of Bertelsen and Petersen Engineering Co., 256 Border Street, East Boston, Mass., as follows:

54

Year	Amount
1917 January to December	$34,555.68, plus such larger amount as may result, plus interest.
1918 January to December	$34,555.68, plus such larger amount as may result, plus interest.

THOMAS W. WHITE, *Collector.*
By V. H. LEWIS, *Dep. Coll.*

Defendant's exhibit A

J. A. VANDEN HEUVEL & Co.,
203–205 METROPOLITAN BANK BUILDING,
Washington, D. C., February 27, 1924

COMMISSIONER OF INTERNAL REVENUE, *Washington, D. C.*

SIR: Herewith I hand you a Waiver for year 1918–1917 renewed prepared on behalf of Bertelsen & Petersen Eng. Company of East Boston, Mass. File reference IT:CA:Ms-2505-PEW-App.

Respectfully,

J. A. VANDEN HEUVEL,
Agent for Taxpayer.

Received by:
[In lead pencil: Waiver 1917–1918 for Sig 2/27/24]
[On back:]
1917 to go to E. SM
1918 to go to Proving tomorrow 2/28/24
1919 & 1920—A-2 2/11/24

Defendant's exhibit B

[In lead pencil: Diamondsten]

[On letterhead of Bertelsen & Petersen Engineering Company]

EAST BOSTON, MASSACHUSETTS, *Dec. 30, 1925.*

COMMISSIONER OF INTERNAL REVENUE, *U. S. Treasury Department, Washington, D. C.*

Re: 1917 Overpayment $91,570.34—It:E:SM-SBD–1043-A-5983

SIR: In accordance with Department letter under date of September 16th, 1925, the following adjustment was set forth with respect to our tax liability for the years 1917 and 1918:

	Year	Deficiency in Tax	Overassessment
55	1917		$91,570.34
	1918	$34,555.68	

As set forth in our brief now on file for your consideration the only year under protest is 1918, we having accepted the adjustment indicated in the foregoing for the taxable year 1917.

Accordingly, therefore, we would respectfully request that the year 1917 be closed at this time without waiting for a final determination of our tax liability for the subsequent year.

Your favorable consideration in this matter would prove of great benefit to our corporation, especially at the present time.

Respectfully yours,

BERTELSEN & PETERSEN ENG. CO.
J. BERTELSEN, *President*

JB/LAW

[Stamped:]

Received Jan. 8, 1926. Special Assessment Section

In United States District Court

Opinion

April 6, 1931

[Published Fed. 2d, .]

BREWSTER, *J.* In its petition and amended petition the petitioner seeks to recover (a) the balance of an over-payment of 1917 income and profits tax, and (b) an additional sum claimed to be due for interest.

The over-payment of the 1917 tax was in part credited against an additional assessment for the year 1918 and an additional assessment for the year 1919. The validity of the additional assessment for the year 1918 is attacked on two grounds:

FIRST: That the petitioner received no notice of the deficiency as prescribed by law; and

SECOND: That it was not made within the period of limitation as extended by the taxpayer's agreements.

The first ground is readily disposed of on the facts of the case.

The determination of the deficiency in the amount of the 1918 tax was made subsequent to the effective date of the Revenue Act of 1924. This Act provided (Sec. 280) that "If after the en-
56 actment of this Act the Commissioner determines that any assessment should be made in respect of any income, war-profits, or excess-profits tax imposed by the . . . Revenue Act of 1918, . . . the amount which should be assessed . . . shall be computed as if this Act had not been enacted, but the amount so computed shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations . . . as in the case of the taxes imposed by this title. . . ."

On September 16, 1925, the deputy commissioner sent a notice to the petitioner that an audit of its income and profit tax return for the year 1918 had resulted in a determination of a deficiency of $34,555.68 in the tax for the year 1918, and that if, after consideration of additional evidence in case of a protest, a deficiency was finally determined by the Bureau to be due from the taxpayer, a notice would be sent under the provisions of Section 274 of the Revenue Act of 1924. On January 23, 1926, a notice was sent in accordance with the provisions of said Section 274 (a). This section gave the taxpayer 60 days within which to file an appeal with the Board of Tax Appeals. Before the expiration of this 60-day period the Revenue Act of 1926 was enacted and, no appeal having been filed, the case came under Section 283 (c) of the Act, which provided as follows:

"If before the enactment of this Act the Commissioner has mailed to any person a notice under subdivision (a) of section 274 of the Revenue Act of 1924 (whether in respect of a tax imposed by Title II of such Act or in respect of so much of an income, war-profits, or excess-profits tax imposed by any of the prior acts enumerated in subdivision (a) of this section as was not assessed before June 3, 1924), and if the 60-day period referred to in such subdivision has not expired before the enactment of this Act and no appeal has been filed before the enactment of this Act, such person may file a petition with the Board in the same manner as if a notice of deficiency had been mailed after the enactment of this Act in respect of a deficiency in the tax imposed by this title. In such cases the 60-
57 day period referred to in subdivision (a) of section 274 of this Act shall begin on the date of the enactment of this Act, and the powers, duties, rights, and privileges of the Commissioner and of the person entitled to file the petition, and the jurisdiction of the Board and of the courts, shall, whether or not the petition is filed, be determined and the computation of the tax shall be made, in the same manner as provided in subdivision (a) of this section."

Subdivision (a) of Section 283 provided in substance that the amount of the tax should be determined as if the Act had not passed, but that it should be assessed, collected and paid in the same manner and subject to the provisions and limitations of the Act of 1926.

The above quoted section (283 (c)) operated to extend the time within which an appeal could be filed to 60 days after February 26, 1926, the effective date of the Act, and during this period no assessment of the deficiency could be made. (Revenue Act of 1926, Section 274 (a).)

It appears to be conceded that the assessment was not actually made until July 27, 1926. The Bureau sent no other or further notice of the additional assessment until October 1927, when the petitioner received a certificate of overassessment respecting the tax for the year 1917, which showed that it had been credited against the additional taxes for the years 1918 and 1919.

I do not find in either the Revenue Act of 1924 or the Revenue Act of 1926 any provision which required the Commissioner to give to the petitioner any notices other than those which appeared to have been given in this case. In other words, I find that the Commissioner complied with all the requirements of law respecting notice of the additional assessment.

The more difficult question is whether the assessment of an additional tax for the year 1918 was made within the period of limitation as extended by written waivers on file in the Bureau.

The return of 1918 income was filed on the sixteenth day of June 1919, and the period within which additional assessments could be made under statutes than extant expired on the
58 sixteenth day of June 1924. On January 8, 1924, the taxpayer signed a waiver which extended the period within which the

assessment of 1918 taxes could be made to January 8, 1925. On February 23, 1924, it signed another waiver respecting the 1917 and 1918 taxes, which operated to extend the time for assessing these taxes to January 8, 1926. On February 27, 1924, it signed a third waiver respecting the 1918 and 1917 taxes, but this waiver only operated to extend the time for one year from its date. It will be noted that this waiver was for a lesser period than the second waiver signed February 23, 1924. On October 30, 1924, the petitioner signed a fourth waiver respecting the assessment of 1918 taxes which contained the following provisions:

"This waiver is in effect from the date it is signed by the taxpayer and will remain in effect for a period of one year after the expiration of the statutory period of limitation within which assessments of taxes may be made for the year or years mentioned, or the statutory period of limitation as extended by Section 277 (b, of the Revenue Act of 1924, or by any waivers already on file with the Bureau."

All of these waivers were executed by the taxpayer and the authority of the officer who signed is not questioned. They were also signed on behalf of the United States by the Commissioner of Internal Revenue.

It is the contention of the petitioner that the first and second waivers given under dates of January 8, 1924 and February 23, 1924, should be wholly disregarded. It is the petitioner's claim, made in argument, that the third waiver of February 27, 1924, extending the time to February 27, 1925, was given in substitution for the earlier waivers and that the waiver of October 30, 1924, extended the time only to February 27, 1926.

From correspondence between the petitioner and the Bureau, it appears that certain subordinates in the Internal Revenue Bureau proceeded upon an erroneous belief that the statutory period of limitation as extended would expire early in 1925. On October 24, 1924, the chief of the section wrote the petitioner asking for a renewal waiver for the years 1917 and 1918, stating that these were desirable in view of the early expiration of the waivers at present on file for these years. Presumably it was in response to this communication that the fourth waiver of October 30, 1924, was given.

It must be conceded that if at the time when this letter was written the third waiver (that of February 27, 1924) was to be treated as the only waiver on file in the Bureau, then the period of limitation would have expired February 27, 1925, but if, as was the fact, other waivers then on file extended the time to January 8, 1926, the waiver of October 30, 1924, operated to further extend the period to January 8, 1927. Whether this statement that the waivers were presently to expire was based upon a definite understanding between the parties that the waivers of January 8, 1924, and of February 23, 1924, were to be treated as void, or whether it was due to the fact that the writer was not aware that they were

on file, are matters of conjecture. Upon the evidence, it is equally probable that more than one clerk in the Bureau was dealing with the taxpayer and for that reason unnecessary waivers were obtained. The fact still remains that they were all given by the taxpayer and that none of them had been withdrawn. Nor does the evidence establish any agreement that they were not to be given full force and effect as waivers duly filed with the Bureau. I must find, therefore, on the evidence that they were all on file at the time the petitioner signed the waiver of October 30, 1924, wherein it expressly assented to an extension of the time for one year beyond the statutory period of limitation as extended by any waiver already on file with the Bureau. The extent of its assent must be gathered from the writing signed on its behalf, and we cannot vary its terms and give it an effect as if it read "or the statutory period as extended by one of the three waivers already on file with the Bureau."

The government contends that even if the waiver of February 23, 1924, be wholly disregarded, then the other waivers together with the statutory provisions suspending the running of the statute of limitations carry the period beyond July 1926. It has already appeared that if the waiver of February 23, 1924, is to be eliminated from consideration, then the taxpayer had assented in the other waivers to an extension of the period of limitation to February 27, 1926. Section 277 (b) of the Revenue Act of 1916, suspended the running of the statute of limitation during the period in which the commissioner was prohibited from making the assessment and for 60 days thereafter.

In the case at bar, the running of the statute of limitation was suspended January 23, 1926, which was 35 days prior to the expiration of the period as extended, according to the contention of the petitioner. This suspension continued, according to sections 277 (b) and 283 (c), until 120 days after February 26, 1926, or to June 26, 1926, with 35 days of the extended time still to run. It is argued by the Government that these 35 days should be added to the 120 days, which would bring the expiration of the period to beyond the twenty-seventh day of July, when the assessment was made. I am unable to adopt the views of the Government on this point. I believe that if the taxpayer had assented to an extension of the period of limitation only to February 27, 1926, the assessment to be valid must have been made within 120 days from the effective date of the Revenue Act of 1926. It is true that before this extended period had expired the statute of limitation was suspended, and an assessment made before that period of suspension had expired would have been valid, but if at the expiration of that 120 days the period of limitation, as extended by agreement, had also expired, any assessment made thereafter would be too late.

This question, however, becomes moot inasmuch as I have concluded that the petitioner by its agreements extended the period of limitation to January 8, 1927.

I find and rule that the assessment of $34,555.68 was valid and the credit to that extent of the overpayment was a proper credit.

As to the question of interest, the credits and refund having been made subsequent to the passage of the Revenue Act of 1926, the liabilities of the defendant for interest on the over-payment must be determined with reference to the provisions of that stat-
61 ute. *United States* v. *Boston Buick Co.* (decided February 2, 1931); 75 L. Ed. 274.

Section 1116 (a) of that Act is as follows:

"Upon the allowance of a credit or refund of any internal-revenue tax erroneously or illegally assessed or collected . . . or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, . . . or sum was paid to the date of allowance of the refund, or in the case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment made under the Revenue Act of 1921, the Revenue Act of 1924, or this Act then to the date of the assessment of that amount."

The government, in the case of the credits, refused to adopt the date of the assessment as the date to which interest should be computed but adopted the due dates of the amounts against which the credits were taken and in respect of the additional tax for 1918 took March 15, 1919, as the due date and March 15, 1920, as the due date for the 1919 additional assessment. Inasmuch as the over-payments were all made subsequent to March 15, 1918, no interest was allowed on the amount credited against the additional 1918 tax, and interest on the amount credited against the 1919 additional assessment was computed only to March 15, 1920. The petitioner contends that it is entitled to have the interest computed from the dates of the over-payments to July 27, 1926, the date of the additional assessments for the years 1918 and 1919.

The application and interpretation of Section 1116 (a) has been construed by the Court of Claims in Riverside & Dam River Cotton Mills, Inc. v. United States, 37 F. (2d) 965; Graniteville Manufacturing Co. v. United States, 39 F. (2d) 746; National Equipment Co. v. United States, 39 F. (2d) 757; and that Court has uniformly held that when an over-payment of taxes has been credited
62 against a deficiency for any year prior to 1921 "interest should be allowed from the date of the over-payment to the due date of the amount against which the credit is taken, and that the words 'due date' used in this section mean the date fixed by the statute for the payment of the tax, or the several instalments thereof; . . ." Riverside & Dam River Cotton Mills, Inc. v United States, at page 968.

Counsel calls attention to the language of section 1116 (a) to the effect that if the amount against which the credit is taken is an additional assessment made under the Revenue Act of 1921, the Revenue Act of 1924, or this Act, then the interest is to be computed to the date of the assessment and argues that in the case at bar the

additional assessment was made under the Act of 1926. This same argument was advanced in Riverside & Dam River Cotton Mills, Inc. v. United States, supra (at page 969) and was met by the court in the following language:

"Plaintiff lays much stress upon the provisions of sections 280 of the Revenue Act of 1924 (16 U. S. C. A., Sec 1064 note) and 283 of the Revenue Act of 1926 (26 U. S. C. A., Sec. 1064), as showing, as it insists, that the additional assessment here involved was an assessment made under the Revenue Act of 1926, but, in our opinion, this contention is without force. The Revenue Act of 1924 repealed the Revenue Act of 1921, but provided that that act should remain in force for the assessment and collection of all taxes imposed by such act, and the Revenue Act of 1926 repealed the Revenue Act of 1924, but contained a similar provision relating to the previous act in force for the assessment and collection of all taxes imposed thereby. Section 280 of the Revenue Act of 1924 and section 283 of the Revenue Act of 1926 related to the procedure to be followed in the determination, assessment, and collection of deficiencies under those acts. These sections did not confer the authority to make an assessment for prior years; that authority was conferred by the prior revenue acts which were retained in force for that purpose, and it was
63 this that Congress had in mind when it provided in section 1116 (26 U. S. C. A. Sec. 153 note) as to the payment of interest on credits in case of an additional assessment 'made under' certain acts."

I agree with the conclusions reached by the learned court in the case of Riverside & Dan River Cotton Mills, Inc. v. United States, supra, and accept as adequate the reasons stated in the opinion. It follows, therefore, that the defendant, in computing the interest, proceeded upon a proper construction of the Act which imposed its obligations to pay interest and that the amount allowed as interest on the over-payment was substantially correct. There seems to be a slight error in computation of the interest on the second payment constituting the over-payment for 1917. The date of the payment was August 8, 1919, instead of August 18, 1919. This would entitle the petitioner to ten days' additional interest computed upon $4,710.64 credited against the 1919 taxes and upon $22,013.06, the balance of the refunded over-payment of 1917 taxes made August 8, 1919. Ten days' interest on these two amounts would aggregate $44.07, for which amount the petitioner is entitled to recover.

In United States District Court

Petitioner's petition for appeal

Filed and Allowed December 7, 1931

Now comes the petitioner, Bertelsen & Petersen Engineering Co., and being aggrieved by the findings, rulings and opinion of the court and by the judgment entered in pursuance thereof in the

above-entitled cause on the fourth day of December, A. D. 1931, hereby appeals from said findings, rulings and judgment to the United States Circuit Court of Appeals for the First Circuit for the reasons specified in the assignment of errors filed herewith, and its prays that this appeal may be allowed and that citation be issued as provided by law and that a transcript of the record, proceedings and documents upon which said judgment was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the First Circuit under the rules of such court in such cases made and provided.

64 And your petitioner further prays that a proper order relating to the security to be required of it be made.

By its Attorneys.

JOSEPH WIGGIN,
LISPENARD B. PHISTER,
JOHN W. LOWRANCE.

December 7, 1931. Appeal allowed.

ELISHA H. BREWSTER,
United States District Judge.

In United States District Court

Assignment of errors

Filed December 7, 1931

The petitioner in this action in connection with its petition for appeal makes the following assignment of errors which it avers occurred upon trial of the cause, to wit:

I. That the United States District Court for the District of Massachusetts erred in ruling that the petitioner was entitled to recover only $44.07.

II. That the United States District Court for the District of Massachusetts erred in refusing to make the following rulings of law:

1. That the waiver of February 23, 1924 (Petitioner's Exhibit 5), upon its signature and acceptance by D. M. Blair, Commissioner, supplanted and rendered null and void the waiver of January 8, 1924 (Petitioner's Exhibit 4).

2. That the waiver of February 27, 1924 (Petitioner's Exhibit 6), upon its signature and acceptance by D. H. Blair, Commissioner, supplanted and rendered null and void the waiver of February 23, 1924 (Petitioner's Exhibit 5).

3. That the close proximity of the dates of January 8, 1924, February 23, 1924 and February 27, 1924, upon which the three waivers (Petitioner's Exhibits 4, 5 and 6, respectively) were executed, in and of itself, taken in conjunction with the subject matter thereof, negatives the claim of the respondent that the waivers are to be tacked on to each other, as is contended by the respondent.

65 4. That the close proximity of the dates January 8, 1924, February 23, 1924, and February 27, 1924, upon which the three waivers (Petitioner's Exhibits 4, 5, and 6, respectively) were executed, in and of itself affirmatively shows that the petitioner intended that the waiver of February 23, 1924 (Petitioner's Exhibit 5), should supplant the waiver of January 8, 1924, (Petitioner's Exhibit 4), and that the waiver of February 27, 1924 (Petitioner's Exhibit 6), should supplant the waiver of February 23, 1924 (Petitioner's Exhibit 5).

5. That in signing and accepting the waiver of February 23, 1924 (Petitioner's Exhibit 5), and the waiver of February 27, 1924 (Petitioner's Exhibit 6), the Commissioner, D. H. Blair, acceded to and acquiesced in the acts of the petitioner in supplanting the waiver of January 8, 1924, with the waiver of February 23, 1924, and in supplanting the waiver of February 23, 1924, with the waiver of February 27, 1924, and the act and intention of the petitioner in respect of said transactions were manifestly known to the Commissioner.

6. That in attempting to assess the deficiency assessment of $34,555.68 the respondent purported to act under the Internal Revenue Act of 1926.

7. That the deficiency assessment of $34,555.68, if lawfully made, was made under the Internal Revenue Act of 1926.

8. That the statutory period of assessment, as extended by waiver and/or by statute, had expired prior to the alleged date of the deficiency assessment of $34,555.68 for the year 1918.

9. That the statutory period for deficiency assessment having expired, the respondent is forced, in its justification of the deficiency assessment of $34,555.68, to depend upon extension thereof by waiver, and it is necessary for the respondent to elect as to whether it shall stand upon the waiver of January 8, 1924 (Petitioner's Exhibit 4), the waivor of February 23, 1924 (Petitioner's Exhibit 5), or the waiver of February 27, 192. (Petitioner's Exhibit 6), as the waiver so chosen by election may be extended by the waiver of October 30, 1924 (Petitioner's Exhibit 7).

66 10. That the writing by the respondent in longhand of the figures and word "1918 Expires 6/15/26" appearing on Petitioner's Exhibit 8, which bears date September 16, 1925, constitutes an admission by the respondent that it had accepted the waiver of February 23, 1924 (Petitioner's Exhibit 5), as displacing and rendering null and void the waiver of January 8, 1924 (Petitioner's Exhibit 4).

11. That the respondent's letter to the petitioner dated October 25, 1924 (Petitioner's Exhibit 13) in and of itself shows that the respondent had, on or before the date of said letter, elected to stand upon the waiver of February 23, 1924 (Petitioner's Exhibit 5), and had treated as null and void the waiver of January 8, 1924 (Petitioner's Exhibit 4), and had, for its own purposes, disregarded,

as expiring aforetime, the waiver of February 27, 1924 (Petitioner's Exhibit 6).

12. That the respondent's letter to the petitioner dated October 25, 1924 (Petitioner's Exhibit 13), within itself constitutes an admission that the respondent had, on or before the date of said letter, elected to stand upon the waiver of February 23, 1924 (Petitioner's Exhibit 5), and had treated as null and void the waiver of January 8, 1924 (Petitioner's Exhibit 4), and had, for its own purposes, disregarded, as expiring aforetime, the waiver of February 27, 1924 (Petitioner's Exhibit 6).

13. That the words "any waivers already on file with the Bureau," as they occur in the waiver of February 23, 1924 (Petitioner's Exhibit 5), and the waiver of October 30, 1924 (Petitioner's Exhibit 7), can only refer to waivers on file which were in force and effect at the time of filing of said waivers of February 23, 1924 and October 30, 1924, the mere physical presence of the antecedent waivers in the files of the respondent being, as a matter of law, insufficient.

14. That the time for the lawful making of the deficiency assessment for the year 1918 cannot, by any interpretation of the law and the facts, be extended beyond June 27, 1926.

15. That if the respondent, relying on the provisions of the Act of 1926, seeks to obtain, by reason of the suspension of the operation of waivers then in force, time additional unto said waivers,
67 and this court sustains said contention of the respondent, then the period thereby gained will expire June 27, 1926.

16. That judgment should be entered in favor of the petitioner in the sum of $57,544.24, together with interest thereon from October 11, 1927, to the date of the bringing of this suit, together with interest on said sums from the date of the bringing of this suit to the date of judgment.

17. That even though this court should rule that the deficiency assessment of $34,555.68 for the year 1918 was lawful, still there is due to the petitioner on account of interest from it unlawfully withheld, the sum of $19,417.61, together with interest thereon from October 11, 1927, to the date of the bringing of this suit, together with interest on said sums from said date of bringing of this suit to the date of judgment.

18. That even though this court should rule that the deficiency assessment of $34,555.68 for the year 1918 was lawful, still there is due to the petitioner, on account of interest from it unlawfully withheld, the sum of $15,634.52 together with interest thereon from July 27, 1926, to the date of the bringing of this suit, together with interest on said sums from said date of bringing of this suit to the date of judgment.

19. That no notice was given to the petitioner of the deficiency assessment of $34,555.68 within a reasonable time, and said deficiency assessment is, by reason of the respondent's failure to give notice within a reasonable time, void.

III. That the United States District Court for the District of Massachusetts erred in excluding the testimony of Paul J. Bertelsen and of James V. Giblin and in refusing to accept the parole evidence to the effect that waiver No. 2 was sent in order that the year 1917 might be included, waiver No. 1 having been confined solely to taxes for the year 1918; that waiver No. 2 was not in the usual form and that waiver No. 3 was sent to correct the use of the informal waiver No. 2 and specifically embraced the two years 1917 and 1918; and that the sole intent on the part of the petitioner in sending
68 waiver No. 3 was to displace waiver No. 2 and that waiver No. 4 was given on the assumption of the petitioner that waiver No. 2 had been displaced.

IV. That the United States District Court for the District of Massachusetts erred in making the following findings and rulings:

1. That the Commissioner of Internal Revenue in this case complied with all the requirements of law respecting notice of additional assessments.

2. That the waivers of January 8, 1924, of February 23, 1924, and of February 27, 1924, were all in full force and effect when the waiver of October 30, 1924, was given.

3. That the petitioner, by its agreements, extended the period of limitation to January 8, 1927.

4. That the assessment of $34,555.68 was valid and the credit to that extent to the overpayment was a proper credit.

5. That the application and interpretation of Section 1116 (a) of the Revenue Act of 1926 was properly construed by the Court of Claims in Riverside & Dan River Cotton Mills, Inc. v. United States, 37 F. (2d) 965; Graniteville Manufacturing Co. v. United States, 39 F. (2d) 746; National Equipment Co. v. United States, 39 F. (2d) 757; and that the doctrine of these cases was adopted and followed by the court in the instant case.

Wherefore, the appellant prays that said judgment be reversed and that the said District Court for the District of Massachusetts be ordered to enter a decree reversing the decision of said District Court in said cause.

By its Attorneys,

JOSEPH WIGGIN,
LISPENARD B. PHISTER,
JOHN W. LOWRANCE.

Recital as to bond

The sum of two hundred and fifty dollars ($250) was deposited by the petitioner in lieu of bond on appeal on December 7, 1931.

69 [Citation in usual form showing service on Frederick H. Tarr, omitted in printing.]

70 [Clerks' certificates to foregoing transcript, omitted in printing.]

U. S. GOVERNMENT PRINTING OFFICE: 1933

IMMEDIATE

This schedule must be executed and all required steps taken without delay.

COMMISSIONER OF INTERNAL REVENUE.

SCHEDULE OF OVERASSESSMENTS

AND

ALLOWANCE OF ABATEMENTS, CREDITS, REFUNDS, AND RELATED CLAIMS, IF ANY

INCOME TAX UNIT

ORIGINAL

Voucher to General Accounting Office

Schedule No. IT-A

Sheet 1 of ..... sheets

RECEIVED—BOSTON, MASS.
JUL 30 1926
CLAIM DIV.—INT. REVENUE

District of MASSACHUSETTS

AUTHORIZATION OF COMMISSIONER

To the Collector ..... District of MASSACHUSETTS

The amounts listed in column 4 as overassessments (or reductions of tax liability) are hereby approved, and the related claims, if any, allowed in the respective amounts indicated by the "Certificates of Overassessment" or "Notices of Adjustment of Claim for Abatement" attached thereto.

You will immediately check each item against the accounts of the several taxpayers, and determine whether the amounts in which the tax liabilities have been reduced should be respectively abated, in whole or in part, and make such abatements as may be warranted by the conditions of the taxpayers' accounts for the years involved.

If any part of any such item is found to be an overpayment, you will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against the taxes due, if any, pending the appropriate entries in your accounts. (This applies only to income, war profits, and excess profits taxes.) Such credits will be entered in column 9, and placed in column 5 of a subsidiary Schedule of Refunds and Credits (Form 7885 A).

The balance, if any, of the overpayment will be entered in column 12, and placed in column 4 of the subsidiary schedule (Form 7885-A) referred to above, and an appropriate memorandum made upon the taxpayer's account.

You will thereupon complete and certify this schedule and the schedule upon Form 7885-A, and return the summary copies of each to the Commissioner of Internal Revenue.

Date ..... 27 .. 5

Deputy Commissioner.

Commissioner of Internal Revenue.

CERTIFICATE OF DEPUTY COMMISSIONER

Commissioner of Internal Revenue:

The entries on this overassessment schedule, together with their totals, have been carefully examined and the law in the case of the respective taxpayers has been determined in accordance with the decisions stated and the law. The overassessments listed in the column headed "Overassessment or Reduction of Tax Liability" appearing in column 4 are recommended for allowance.

Date ..... 27 .. 5

Deputy Commissioner.

CERTIFICATE OF COLLECTOR

To the Commissioner of Internal Revenue:

The items in this schedule have been checked against the accounts of the respective taxpayers concerned and the amounts indicated have been applied as abatements and credits on their accounts.

The amounts of overpayment and the net amounts refundable have been determined to be as indicated hereon.

Date SEP 2 4 1926

Collector ..... District of MASS

ACCOUNTS UNIT

Stated and entered

INITIALS	DATE

(Entries to be made by the Collector)

Item No. (1)	Certificate of Overassessment or Claim Number (2)	Name of Taxpayer (3)	Overassessment or Reduction of Tax Liability (Amount) (4)	Ledger, Page and Line, or Account Number (5)	Taxable Year (6)	Abatement (Amount) (7)	Overpayment (Amount) (8)	Credit (Amount carried to Form 7885-A) (9)	Account Credited; Ledger, Page, and Line (10)	Due Date of Items Against Which Credit Was Made (11)	Net Amount Refundable Carried to Form 7885-A (12)	Remarks (13)
2	452133	BERTELSEN & PETERSEN ENGINEERING CO.	91570.34		17		91570.34	4718.66 34556.68	[illegible]	3-15-25 3-15-19	52284.02	

91,320.94

TREASURY DEPARTMENT
U. S. Internal Revenue Service
Form approved by the Comptroller General
May 17, 1926

IMMEDIATE

This schedule must be executed and all required steps taken without delay.

COMMISSIONER OF INTERNAL REVENUE.

8-H 1-7-28

SCHEDULE OF REFUNDS AND CREDITS

ILLEGAL OR ERRONEOUS COLLECTIONS

INCOME TAX UNIT

ORIGINAL

Voucher to General Accounting Office

H-13744

Schedule No. [illegible]-2448

Sheet 1 of ..... sheets.

..... Dist. of [illegible]setts

D. C. Voucher No. 5667

CERTIFICATE OF COLLECTOR

To the Commissioner of Internal Revenue:

The items herein are allowed as they appear for refund or credit on an original schedule (bearing the same number) of overassessments and related claims, if any, heretofore approved and allowed by the Commissioner of Internal Revenue. An examination of the accounts of the several taxpayers named discloses such items to be the portions of such previously allowed overassessments or reductions of tax liability subject to refund or credit.

Date SEP 2 4 1926

Collector ..... District of MASS

CERTIFICATE OF DEPUTY COMMISSIONER

Commissioner of Internal Revenue:

The items listed in column 4 hereof have been found to be the refundable portions of overassessments heretofore allowed, and the accrued interest, if any, listed in column 6 has been found due.

Date .....

Assistant to the Commissioner.

AUTHORIZATION OF COMMISSIONER

To the Disbursing Clerk, Treasury Department:

The items listed in column 4 hereof have been found to be the refundable portions of overassessments heretofore allowed, and the accrued interest, if any, listed in column 6 has been found due. Payment may, therefore, be made in the amounts shown in column 7.

Date .....

Commissioner of Internal Revenue.

UNIT	NOTATIONS	DATE
		NOV 6 192

(Entries to be made by the Collector)

Item No. (1)	Certificate of Overassessment or Claim Number (2)	Name and Address of Taxpayer (3)	Net Amount Refundable (4)	Amount Credited (5)	Interest Accrued (Not to be used by Collector) (6)	Total Refundable (Not to be used by Collector) (7)	Date of Final Payment of Assessments from which Credited and Overpayments Found (8)	Refunding Taxes Illegally Collected: 1926 and Prior Years (9)	19.... (10)	19.... (11)	Paid by Disbursing Clerk, Treas. Dept., or Checks Drawn, Numbered as Follows (12)	Remarks (13)
1	452133	Bertelsen & Petersen Engineering Co.	32304 02	32200 32	2311275		10-14-20	7541977				Re-assessment
2		Bertelsen & Petersen Engineering Co. (Int)	3-10 08		3879 88		10-14-20	1169903				Re-assessment

CERTIFIED FOR PAYMENT

In the Sum of $ 93017.27

SCHEDULE OF OVERASSESSMENTS

TREASURY DEPARTMENT
U. S. Internal Revenue Service
Form 1000
Form approved by Comptroller General U. S.
September 15, 1939

CERTIFIED FOR PAYMENT
in the Sum of $ 9,301.29

SCHEDULE OF OVERASSESSMENTS

ABATEMENTS, CREDITS, AND REFUNDS

INCOME TAX UNIT

J. R. McCarl
Comptroller General
of the United States.
By ... D. C. Bell

Schedule No. IT- 27060

Sheet 1 of ____ sheets

March District of ____

Disbursing Clerk Voucher No. 2068

AUTHORIZATION OF COMMISSIONER

This schedule must be collected and all required steps taken IMMEDIATELY.
The amounts listed in column 5 as overassessments (or reductions of tax liability) are hereby approved and allowed in the respective amounts indicated, if any.
The COLLECTOR will immediately check such items against the accounts of the taxpayers and determine whether the amounts in which the tax liabilities have been reduced should be respectively abated in whole or in part and make such abatements as may be warranted by the condition of the taxpayer's accounts for the years involved. If any part of any such item is found to be an overpayment, the Collector will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against income, war profits, or excess profits taxes due, if any, making the appropriate entries in his accounts. The amounts credited will be entered by the Collector in column 6. The balance, if any, of the overpayment schedules will be entered in column 7 and an appropriate MEMORANDUM made upon the taxpayer's account showing the refund and the amount refunded. The Collector will thereupon complete and certify this schedule and return the same, with the necessary papers, to the Commissioner of Internal Revenue.
The DEPUTY COMMISSIONER of Internal Revenue will compute the interest payable, list the same in column 8, and enter the respective total amounts payable in column 9 or 10, or both.
The DISBURSING CLERK, Treasury Department, is authorized to pay the amounts specified in column 9 or 10, or both.

Date ____

C. B. Allen
Deputy Commissioner.

Date ____

C. O. Nash
Acting Commissioner of Internal Revenue.

CERTIFICATE OF COLLECTOR

To the Commissioner of Internal Revenue:

The items on this schedule have been checked against the accounts of the respective taxpayers concerned. Abatements and credits in their accounts have been applied in the amounts indicated, and not amounts refundable have been determined as shown in column 7.

Date ____

SEE COLUMNS 2 AND 5

Collector ____ District of ____

INITIALS	DATE

Certificate of Overassessment Number	Name of Taxpayer	Overassessment or Reduction of Tax Liability (Abated)	Tax Year	(Entries to be made by the Collector) Amount Abated	Amount Credited to Other Taxes Due	Net Amount Refunded	(Entries to be made by the Bureau of Internal Revenue) REFUNDING TAXES ILLEGALLY COLLECTED Interest Refund and Credit	Amount Now Paid 1940 For Prior Years	Amount to be Paid 19__	Paid by Direction of Comptroller General Dated / Refunded as Overpaid	Date of Payment
1	2	3	4	5	6	7	8	9	10	11	12
542133	[illegible]										
	[illegible] Engineering Co.	21440		[illegible]		2304 02	[illegible]	[illegible]			
	[illegible]										
	[illegible] Engineering Co.	21440		[illegible]		[illegible]	[illegible]	[illegible]		143094	